

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.181 of 2017

Present: **Mr. Justice Nazar Akbar**

Applicant : Irshad Anwar Khan
Through Mr. Izhar Alam Farooqi, Advocate.

Versus

Respondent No.1 : Muhammad Feroze Anwar Khan. (Nemo).

Respondent No.2 : The State,
Through Ms. Amna Ansari, Additional P.G.

Date of Hearing : **04.03.2019**

Date of Decision : **04.03.2019**

ORDER

NAZAR AKBAR, J.- Applicant has preferred this Criminal Revision Application against the order dated **13.09.2017** delivered by learned II-Additional District and Sessions Judge, West Karachi, whereby the trial Court has dismissed application under Section 193 PPC filed by the applicant/accused in Sessions Case No.83/2009.

2. To be very precise, the facts of the case are that the applicant/accused is facing trial in Sessions Case No.83/2009 and during evidence in the said case, the applicant/accused filed application under Section 193 PPC before the trial Court stating therein that the complainant has intentionally given false evidence in his examination in chief recorded on **29.09.2009** by stating that the accused are his step brothers, while he has filed petition No.16/2008 under Section 22-A Cr.P.C before the District and Sessions Judge, West Karachi on **08.01.2008** in which it was mentioned in para-2 of the petition that the accused are his real brothers and for the purpose of obtaining the order in his favour on the basis of false evidence given by him as Ex.3

dated **29.09.2009**, therefore, action be taken against the complainant.

3. The complainant filed objection to the said application before the trial Court wherein he opposed the application and contended that he has correctly stated in his evidence at Ex.3 that the accused are his step brothers and there is no falseness in the sais statement and further stated that since the father of complainant and accused is same and mothers of complainant and accused are different, therefore, the complainant made the same statement i.e real brother in the petition bearing No.16/2008 under Section 22-A Cr.P.C.

4. The learned trial Court after hearing learned counsel for the parties rejected said application filed by the applicant/accused by order dated **13.09.2017** in the following terms:-

*So keeping in view the above mentioned circumstances and in the interest of justice to avoid the multiple litigation between them at this stage the prayer of this application is not liable to be considered with observation that **accused Irshad Anwar Khan is at liberty to file private complaint against him before proper forum/Court of law.***

5. I have heard learned counsel for the Applicant as well as learned DPG for the State and perused the record.

6. Learned counsel for the applicant contended that the trial Court has misled by the law and wrongly observed that the application under Section 193 PPC is not maintainable and private complaint can be filed in competent Court of law, therefore, the impugned order is liable to be set aside.

7. Conversely, learned Additional P.G has supported the impugned order and contended that the trial Court has rightly passed the impugned order.

8. It is not denied by the applicant that from mother side they are step brothers of each other, therefore, it cannot be said that such assertion of respondent was totally unfounded. While dismissing application under Section 193 PPC, the trial Court has observed that the applicant/ accused is at liberty to file private complaint against the complainant before proper forum/ Court of law but till date the applicant/ accused has not filed any private complaint before proper forum and challenged the impugned order through instant Criminal Revision Application. Even otherwise, mere statement is not enough to constitute the offence under Section 193 PPC unless it is reiterated in evidence and in cross examination it was found false, the provision of **Section 193 PPC** cannot be attracted.

9. In view of the above, no case is made out for interference in the impugned order, therefore, instant Criminal Miscellaneous Application was dismissed in by short order dated **04.03.2019** and these are the reasons for the same.

JUDGE

Karachi
Dated:11.03.2019

Ayaz Gul