

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Crl. Misc: Application No.75 of 2019**

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

**Fresh Case**

1. For orders on M.A No.1733/2019 (U/A)
2. For orders on M.A No.1734/2019 (Ex/A)
3. For hearing of main case.

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*Asmatullah Khan and others*                      *vs.*                      *Zulaikha & others*

**25.02.2019**

Mr. Saadat Hussain, advocate for the applicant.  
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**NAZAR AKBAR, J.** Through this Crl. Misc: Application the applicant has challenged the order dated **09.02.2019** passed by the XII-Additional Sessions Judge, West Karachi in Crl. Misc: Application No.189/2019, whereby the application **Section 22-A Cr.P.C** filed by respondent No.1 for registering a FIR was allowed.

2. Learned counsel for the applicant contends that there is a dispute between the parties in respect of purchase of property and, the applicant has lodged FIR, therefore, respondent No.1 also filed application under Sectin 22-A Cr.P.C as a counter blast to pressurize the applicant, therefore, impugned order be set aside.

3. I have perused the impugned order in which the trial Court has observed that:-

*As a condition of precedent, the applicant is directed to appear before the S.H.O P.S Saeedabad, S.H.O P.S Saeedabad is directed to record statement of the petitioner and **if any cognizable offence is made out from the verbatim of the statement so made by the petitioner, the S.H.O shall record the FIR as per law.***

*In view of the case law Muhammad Basheer V/s Station House Officer Okara Cantt and Others reported in **PLD 2007 SC 539** it was held that the accused shall not be arrested till substantive evidence is collected by Investigating Officer during investigation of the case. Investigating Officer shall be at liberty to initiate proceedings under 182 PPC against the applicant if it comes on surface during investigation that the said petition or their case is fraught with mala fide intention and is based on false and fabricated facts. Applicant is disposed of in above terms and conditions.*

The above order clearly reflects that it is the duty of police to have registered the case against the applicants and to act strictly in accordance with law. If it could turned out to be a false case against the applicants, they would have remedy for redressal of frivolous case. Merely because earlier application under **Section 22-A Cr.P.C** was dismissed in the absence of counsel and the respondent, the second application cannot be dismissed. In criminal cases “resjudicata” does not apply. No case is made out to interfere with the impugned order passed by the learned trial Court.

4. In view of the above, instant Criminal Miscellaneous Application is dismissed in limini alongwith listed applications.

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JUDGE

Ayaz Gul