

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No. S-469 of 2019.

Petitioner Syed Muhammad Raza Qaim Rizvi through Mr. Muhammad Waheed Kazi, advocate.

Respondent No.3 Muhammad Imran Rana through Mr. Muhammad Riaz Abbasi, advocate.

Respondent No.4 through Mr. Sagheer Ahmed Abbassi, APG.

Date of short order: 03.07.2019.

J U D G M E N T

FAHIM AHMED SIDDIQUI, J:- Through the instant constitution petition, the petitioner impugns the order dated 23-02-2018 passed by the learned Judicial Magistrate-IX, Karachi West passed on the Final Report submitted by the police in F.I.R. No. 501/2017 under Sections 420, 468 & 471 PPC of PS SITE-A. Through the impugned order, the learned Magistrate refused to take cognizance and cancelled the aforementioned F.I.R. and simultaneously issued a direction to the SHO for taking action against the complainant under Section 182 PPC.

2. The learned counsel for the petitioner, while assailing the impugned order, submits that when a report is submitted under Section 173 of the Code of Criminal Procedure, 1998 (hereinafter referred as 'CrPC'), the learned Magistrate cannot convert the same as a report under 'B' Class. According to him, the only course available to the learned Magistrate is either to take cognizance or not to take cognizance but he has no authority to pass an order for cancellation of F.I.R. when a Final Report is submitted in the prescribed format. In support of his contention, he relies upon cases reported as *Said Jalal and 2 others v. The State* and another (1972 SCMR 516) & *Abdul Hafeez Junejo v. State* (2010 YLR 470).

3. The learned counsel for respondent No. 3 supports the impugned order by submitting that the learned Magistrate is fully competent to pass any order on a report submitted under Section 173 CrPC. He submits that it will be amounting to a miscarriage of justice if the accused is involved in a case, which is apparently false and fabricated; and if cognizance will be taken, he will have no other option but to face trial. According to him, the learned Magistrate is also competent to issue directions for taking action as per provision under Section 182 PPC. However, he frankly states that the respondent No. 3 will not pursue in respect of the action under Section 182 PPC. He relies upon a case reported as *Syeda Afshan v. Syed Farrukh Ali* (PLD 2013 Sindh 423).

4. The learned APG opposes the impugned order by submitting that the learned Magistrate either has to accept the Final Report filed under the prescribed format of Section 173 CrPC or to discharge the accused. He further submits that a direction to SHO for taking action under Section 182 CrPC is also improper.

5. I have heard the arguments and have gone through the impugned order. It is a very lengthy order in which the learned Magistrate has entered into some scholastic discussion regarding the power of the Magistrate at the time of handling a police report. He also quoted a provision of Bombay Police Manual regarding 'B' Class summary in a way that the same has a force of law of the land. It is noteworthy that submitting of summaries under A, B and C classes is a unique practice, which is being followed by police only in the Province of Sindh. This practice dates back to an era when the province of Sindh was the part of Bombay Presidency and after separation of Sindh from Bombay Presidency, this practice remains continued till this date and the same is not curbed by the Courts, as it is not conflicting with any statutory provision. The purpose of filing the report as a summary in

any of the three classes before the learned Magistrate is not a recommendation from the police for taking cognizance but for disposal of the case either as untraceable/insufficient evidence, false or cancel. If a summary is recommended under B or C classes, it means that the F.I.R. is required to be nullified but in case, the report is in 'A' Class, the F.I.R. shall remain alive and the learned Magistrate has to call periodical reports from the investigator regarding the progress in the case.

6. It is important to elaborate that there are two types of reports submitted under Section 173 CrPC after completing the investigation. One of such reports is placed on the prescribed format in which the investigation officer opined that some cognizable offence has taken place and recommend for taking cognizance of the offence. In such report, every detail of offence and offenders, investigation collected and detail of witnesses privy to offence in any manner and recoveries are mentioned precisely. Such report may be treated as a positive report. Considering the facts described by the complainant in the F.I.R. and the materials placed before the learned Magistrate at the time of filing such report, Magistrate may accept such report or pass any further order as deem fit. The basic ingredient for a cognizable offence is a *sine qua non* for recording F.I.R. is that there must be an information and that information must disclose a cognizable offence and the author of the offence are also either nominated or traced out during the investigation. However, if a cognizable offence is taken place but the offenders are not known and they are untraceable or evidence so far collected is not sufficient for forward the accused for taking cognizance then a report is submitted, which is referred as a report in 'A' Class. In such a situation, the police will be given an opportunity to carry on the investigation and locate the culprits or collect further material. But in such a case, it is the duty of the Magistrate to remain vigilant and do not allow the investigation to be at rest and direct the investigators to furnish

report regarding their efforts for tracing the author of the offence. A purely negative report is that when the police opined that the offence is not taken place and the complainant has falsely reported a case ('B' Class) or the offence is reported by the complainant due to some misconception etc. ('C' Class). In both the situation, he recommends for cancellation of F.I.R. All these reports are technically known as negative report and on such report Magistrate may pass any appropriate order and even he can take cognizance of the offence

7. Nevertheless, when a final report is placed before the Magistrate with a positive opinion with recommendation for taking cognizance, there are only two options with the learned Magistrate, either he has to take cognizance or to discharge the offenders, if he considers that such final report is not worthy to take cognizance. There is not any room left for the learned Magistrate to pass any other direction when a report is submitted with a recommendation for taking cognizance of the offence. The learned Magistrate has no power to convert a positive final report submitted for taking cognizance into a report under 'B' Class i.e. a false F.I.R. As far as the pleas of the nominated accused regarding falsification of F.I.R. are concerned, he is not remediless if cognizance is taken by the learned Magistrate in the instant case. In the light of the dictum laid down by the Hon'ble Supreme Court in the judgment reported as Director General ACE, Lahore and others v. Muhammad Akram Khan and others (PLD 2013 Supreme Court 401), he may approach the trial Court for his pre-mature acquittal, if he thinks that he is falsely involved in the case.

8. Come to the instant matter. In the present case the learned Magistrate has given direction to the concerned SHO for issuance of notice to the complainant of the F.I.R. for initiating proceedings under Section 182 PPC after treating the final report as a report under 'B' Class. I am of the

candid view that this practice is not appreciable rather unjustified and contrary to law. No doubt, a person who has given a false information to a civil servant may expose himself for taking action under Section 182 PPC but initiating such proceedings is solely under the discretion of the civil servant concerned in which no one can interfere and even a judicial direction for the same cannot be issued just because of the bar imposed by Section 195 CrPC.

9. According to Section 195 CrPC, in all offences punishable under Sections 172 to 188 PPC, no Court can take cognizance except on a written complaint of the concerned public servant or some other public servant to whom he is subordinate. I am of the considered view that giving a direction to the SHO for issuance of notice for initiating a proceeding under Section 182 PPC is amounting to take cognizance, which is unwarranted under the statutory provision referred above. In support of my contention, I would like to refer a case of this Court, reported as Muhammad Ibrahim vs. Umaid Ali and 4 others (2016 MLD 346).

10. The ultimate outcome of the entire discussion is that the impugned order passed by the learned judicial Magistrate is not proper, as such the same is set aside and the learned Judicial Magistrate is directed to pass an appropriate and speaking order afresh after scanning the entire material judiciously.

The above are the reasons of my short order dated 03-07-2019.

Dated:_____

J U D G E