

**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Misc. Application No. 242 of 2019

Muhammad Fareed Noorani ...v/s....Muhammad Rashid Noorani &amp; others.

Criminal Misc. Application No. 256 of 2019

Rashid Noorani ...v/s....Izzat Khan Wagan &amp; others.

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Date of short order: 17-07-2019

Applicant Muhammad Fareed Noorani in Cr. Misc. Application No. 242 of 2019 and Respondent No.2 in Cr. Misc. Application No. 256 of 2019 through Mr. Muhammad Tamaz Khan, advocate.

Applicant Muhammad Rashid Noorani in Cr. Misc. Application No. 256 of 2019 and Respondent No.1 in Cr. Misc. Application No. 242 of 2019 through Mr. Saathi M. Ishaque, advocate.

Respondent the State through Mr. Zahoor Shah, DPG.

**ORDER**

**FAHIM AHMED SIDDIQUI, J:-** This single order will dispose of the captioned criminal miscellaneous applications against one and the same impugned order passed by learned Judicial Magistrate-XXI, Karachi East on a summary placed by the Investigation Officer under 'B' Class in F.I.R. No. 260/2018 under Section 381 PPC lodged at PS KIA. Through the impugned order, the learned Judicial Magistrate after treating the said summary under 'C' Class, accepted the same and cancelled the aforementioned F.I.R.

2. Parties contending here are relative and it is alleged in the F.I.R. lodged by the respondent Muhammad Rashid against the applicant Muhammad Fareed (Cr. Misc. Application No. 242/2019) regarding theft of some electronic cards, which are essential for the operation of machines in the factory of the complainant. After investigation, the police came to conclusion that the offence was falsely reported, as such a summary under 'B' Class was placed by the Investigation Officer before the learned

Judicial Magistrate, who treated the same as 'C' Class in his detailed order.

3. Mr. Muhammad Tamaz Khan, advocate is appearing for the applicant in Cr. Misc. Application No. 242/2019. According to him, since the F.I.R. lodged against the applicant has been established as false; therefore, the order of the learned Judicial Magistrate is improper and he has to accept the summary under 'B' Class. He submits that in case the summary is accepted under 'B' Class, the nominated accused would have a remedy against the false complaint by initiating proceeding under Section 182 PPC. According to him, in such a situation the accused persons would have approached the concerned police officer for taking action against the respondent/complainant for initiating proceedings against him. He prays that the impugned order be set aside and the learned judicial magistrate is directed to take action against the applicant.

4. Mr. Sathi M. Ishaq, who is counsel for the applicant in Cr. Misc. Application No. 256/2019 also argued at length. Contrary to the submission of the Mr. Tamaz, his contention is that the F.I.R. lodged by the complainant of Crime No. 260/2018 is based upon the true facts and the summary report submitted by the Investigation Officer under 'B' Class is actually the result of influence of the nominated accused persons. According to him, there are eyewitnesses of the incident and all the evidence is available with the complainant of the case but the investigation officer deliberately avoided to collect the material evidence in the instant case. He submits that the complainant has all the proofs regarding the offence with him but the police is supporting the accused persons. He submits that the learned Magistrate has to consider all these facts and he has to call the complainant of the F.I.R. to verify the actual facts of the case as narrated in the F.I.R. In course of arguments, Mr. Ishaq points out that the main accused is actually the maternal nephew of the father of complainant and he was employed in the factory and during lifetime, father of complainant has given him a status of working partner but in fact he is

not a proper partner in the business of the complainant, as he has no share in the paid-up capital of the company/factory. He seeks direction to the learned Judicial Magistrate for taking cognizance against nominated accused. Nevertheless, in response to a query, Mr. Ishaq frankly admits that there are civil litigations between the parties.

5. I have heard the arguments advanced and have gone through the relevant record. It is admitted position that applicant Muhammad Fareed (Cr. Misc. Application No. 242/2019) was working in the factory dates back to the lifetime of the father of complainant of aforementioned F.I.R. After his death, some disputes arose between the parties due to which the parties are now antagonist in some civil litigation. It is mentioned in the statement of one of watchmen of the factory that he had provided a knife to the applicant Muhammad Fareed (nominated accused in F.I.R.), when he could not provide a screwdriver on his demand and from the same knife, the electronic cards from the machine were taken away. The investigator in his investigation came to conclusion that the narration of F.I.R. could not be established on the ground of evidence collected by him, as such he placed the summary for cancellation of F.I.R. In the report, Investigation Officer opined that the offence alleged in the F.I.R. appears to be false, as such a report was placed before the trial Court for cancellation of F.I.R. under 'B' Class, which was subsequently treated in 'C' Class by the learned Magistrate. The contention of Mr. Tamaz Khan, advocate that by lodging a false report, the complainant of the alleged offence has exposed himself for taking action under section 182 PPC may be correct but his intention to initiate action under Section 182 PPC is not according to settled law. His opinion that the nominated accused of a false F.I.R. may approach to the concerned S.H.O. for seeking such remedy through him is also against the spirit of law. In this respect, my observation is that taking action under Section 182 PPC is solely under the desecration of the police officer concerned to whom a false information of cognizable offence is given and in his discretion none can interfere and

even no judicial direction can be given to him for taking action under Section 182 PPC against a person, who has lodged false F.I.R. in view of the bar imposed under Section 195 CrPC, according to which 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. In my considered view, issuing such direction to S.H.O. by a Magistrate amounts to take cognizance, which is prohibited under the provision of Section 195 CrPC. In this respect, I would like to take reliance from a case of this Court, reported as Muhammad Ibrahim vs. Umaid Ali and 4 others (2016 MLD 346).

6. As far as the plea taken by Mr. Sathi M. Ishaq, advocate is concerned, I am afraid that the same can also be not be entertained. Mr. Ishaque's contention is that the investigator is influenced by the alleged accused of the offence but nothing on the record could be produced to establish such influence. Even, he could not place a single complaint against the Investigation Officer before his high-ups. On the contrary, during the course of arguments, Mr. Ishaque contends that his client has all evidence with him against the nominated accused persons but the same was not collected by the investigator properly. In this respect, my observation is that if a complainant has every evidence with him and his control, he does not require any assistance of the State for collection of evidence, which happens in FIR cases, hence proper course available with him to file a private complaint, which is equally rather more efficacious proceeding in respect of his grievance.

7. With these observations, both the aforementioned criminal miscellaneous applications are dismissed.

The above are the reasons for my short order dated 17-07-2019.

Dated:\_\_\_\_\_

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