

*ORDER SHEET*  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Cr. Rev. A. No.S- 38 of 2006

For hearing of case.

16.03.2020

Mr. Abdul Hameed Bajwa, Advocate for the Applicant.

Ms. Rameshan Oad, A.P.G.

None present for private Respondents.

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**ORDER**

**ABDUL MAALIK GADDI, J.-** Through this criminal revision application, Applicant Malik Akhtar Ali Awan has assailed the legality and propriety of the order dated 17.03.2006, passed by learned IInd Additional Sessions Judge, Badin in Cr. B. A. No. 75 of 2006, emanating from Crime No.180 of 2005, registered at Police Station Badin, under sections 341, 337-H(ii), 147, 148, 149 and 440 PPC, only to the extent of para-4 of said order, whereby the learned Court below while granting ad-interim pre-arrest bail to accused / private Respondents, also ordered to initiate action / proceedings under section 182 P.P.C against Applicant on the ground that during investigation of the said F.I.R. the allegations leveled by the Applicant (complainant) in his aforementioned F.I.R, which envisaged under sections 17(3) Offence Against Property (Enforcement of Hudood) Ordinance, 1979 and 395 and 397 PPC, were found false, therefore, the Applicant was found liable to be prosecuted u/s 182 PPC; hence this criminal revision application.

2. The facts of the prosecution case, which are necessary for disposal of this criminal revision application, are that an F.I.R bearing Crime No.180/2005 was lodged by Applicant Malik Akhtar Ali Awan at Police Station Badin under section 17(3) Offence Against Property (Enforcement of Hudood) Ordinance, 1979 and sections 395, 397, 337-H(ii), 341 PPC, however, it appears from the record that during

investigation the offence under section 17(3) Offence Against Property (Enforcement of Hudood) Ordinance, 1979 and sections 395 and 397 PPC have been deleted by the I.O of the case and he submitted challan before the concerned Court under sections 440, 147, 148, 149, 337-H(ii) and 341 PPC which was accepted.

3. Thereafter, as also appears from the record, private respondents have moved an application for grant of pre-arrest bail and during hearing of said application, Applicant has filed a statement before the trial Court giving his no objection in favour of the Respondents for grant of pre-arrest bail, as according to the learned counsel for the Applicant, all the offences mentioned in the challan were compoundable except sections 147, 148 and 149 PPC, which however, were supplementary in nature, but the Court below while disposing of the said bail application in para-4 of the order has illegally directed to initiate proceedings against the applicant under section 182 PPC without assigning any valid and cogent reason and according to him, the case is still pending but since accused (private Respondents) now are absconders, therefore, it has been kept on dormant file. Therefore, he prayed that the order against the Applicant for initiating proceedings may be set aside.

4. Learned A.P.G has extended her no objection.

5. Heard parties' counsel and perused the record.

6. It appears from the record that while granting bail to private Respondents the Court below has taken into consideration the investigation report wherein certain charges were dropped against them on the ground of being false and directed lodging of F.I.R. against Applicant (complainant) u/s 182 PPC by observing that the same were not challenged by him. It is a settled law that the stage of hearing / granting bail is not appropriate as since the matter was ceased of by the

trial Court by keeping it on dormant file and complainant is yet to be examined in the said case.

7. It is an admitted fact that after investigation challan of the case has been submitted under sections 440, 147, 148, 149, 337-H(ii) and 341 PPC which was accepted by the Court. Since sections 440, 337-H(ii) and 341 PPC are compoundable, therefore, sections 147, 148 and 149 PPC which are supplementary in nature can be ignored. Learned trial Court has given impugned direction for initiating proceedings against the Applicant purely on the ground that the applicant has extended his no objection for grant of pre-arrest bail in favour of private Respondents (accused). I am not impressed with such view taken by the Court below for initiating action / proceedings against the applicant for the reasons that under the law it is the right of every person / complainant or prosecution witness to oppose or extend his no objection for grant of bail to an accused person which right cannot be taken away; besides this, challan of the case submitted by the I.O while deleting sections 17(3) Offence Against Property (Enforcement of Hudood) Ordinance, 1979 and sections 395 and 397 PPC, has been accepted by the Judicial Magistrate concerned, and it is noted that the cognizance taken by the said Magistrate has also not been challenged by the State.

8. It is further noted that while giving impugned direction, learned Court below has not suggested any action against the I.O of the case who deleted the main sections from the challan sheet, as observed above.

9. During course of arguments, learned counsel for the Applicant informed that at present the accused are absconders, therefore, the main case has been kept on dormant file. On the other hand, learned A.P.G submits that since the trial has not been concluded, therefore, the impugned direction is premature, hence the same may be struck down.

10. In view of above, the impugned direction is not appropriate, as the trial Court has ceased of the matter and the complainant is yet to be examined by the trial Court. This criminal revision application is pending since 2006. Almost, 14 years have been passed and the applicant who is complainant of the case is facing the agony of trial as well as pendency of instant application apparently without his any fault. In these circumstances, I allow this criminal revision application and set aside the impugned direction contained in para-4 of the order dated 17.03.2006, passed by learned IInd Additional Sessions Judge, Badin in Cr. B. A. No. 75 of 2006 (emanating from F.I.R. No.180/2005, registered at P.S Badin, under sections 341, 337-H(ii), 147, 148, 149 and 440 PPC). However, the trial Court may proceed with the matter in accordance with law.

11. Copy of this order be faxed to the trial Court through Sessions Judge, Badin for information and compliance.

JUDGE

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