

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

Cr. Misc. Application No. S- 651 of 2019

DATED **ORDER WITH SIGNATURE OF JUDGE**

For orders on office objection.

For hearing of main case.

21.09.2020

Mr. Muhammad Zahid Chohan, Advocate alongwith applicant.

Mr. Manzoor Ahmed Panhwar, Advocate for private respondents.

Ms. Rameshan Oad, Asst. Prosecutor General.

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ABDUL MAALIK GADDI, J- Through this Criminal Miscellaneous Application , applicant Muntazir Mehdi s/o Nazeer Ahmed Laghari, has assailed the legality and propriety of the order dated 15.11.2019 passed by the learned Additional Sessions Judge-I, Tando Muhammad Khan in Cr. Misc. Application No.214 of 2019 filed by the applicant u/s 22-A & B Cr.P.C, whereby the trial Court after hearing the respective parties allowed the said application only to the extent of proposed accused No.1 Shahid s/o Perviaz Khaskheli and Pervaiz s/o Jumman Khaskheli whereas the application with regard to remaining proposed accused was dismissed.

2. The case and claim as alleged by the applicant in his application u/s 22-A & B Cr.P.C is that on 17.03.2019 at about 10:30 am. he along with his brother namely Azhar Mehdi and Ghazanfar Mehdi were filling earth which was government land and this piece of land was in Mohag of their own land but proposed accused persons duly armed with pistols, hatchets and sticks restrained the applicant and his brothers from filling earth as they claimed as it is their property.

3. It is further alleged by the applicant that proposed accused Abdul Sattar and Mehrab instigated the other proposed accused and on their instigation, accused Shahid hit back side of the hatchet to Azhar on his face and accused Pervaiz hit back side of hatchet to Ghazanfar on his arm. Whereas, the remaining proposed accused beaten the applicant and his brothers.

4. Mr. Muhammad Zahid Chohan, learned counsel for applicant contended that proposed accused though armed with hatchets, pistols and sticks caused hatchet blows to both injured but the learned trial

court while passing the impugned order partially allowed the application of the applicant only to the extent of proposed accused Shahid and Pervaiz while the application with regard to remaining accused persons was dismissed without assigning any valid and cogent reason; that according to him, as per complaint a cognizable offence was made out but the trial Court did not consider the plea of the applicant as well as documents and medical report so available on record. During the course of arguments, learned counsel has reiterated the same facts as stated in the memo of Cr. Misc. Application and was of the view that in view of the said application and documents on record this Cr. Misc. Application filed by the applicant should have been allowed against all accused persons.

5. Ms. Rameshan Oad, Asst. Prosecutor General, Sindh has supported the arguments advanced by learned counsel for the applicant.

6. Conversely, Mr. Manzoor Ahmed Panhwar, learned counsel for private respondents while supporting the impugned order submitted that the case and claim of the applicant as stated in the Cr. Misc. Application No.214 of 2019 for registration of F.I.R against proposed accused persons is based on false story and according to him in-fact no incident has taken place on the relevant date and time and nobody has received any injury from the complainant side and in this regard he has referred to the report dated 24.05.2019 issued by the office of Medical Superintendent Civil Surgeon, Services Hospital Hyderabad (available at page 75 of the Court file) wherein it has been opined that injury received by both injured can be sustained due to an accident. He further submits that enmity between the parties is evident therefore, false implication of the proposed accused in the present case cannot be ruled out; that the trial Court has issued direction to the applicant to record the statement before concerned police station but despite of the said direction and after passing of 9 months, the applicant did not approach the concerned police station, which shows that the applicant unnecessarily drag the proposed accused into uncalled for litigation.

7. I have heard the arguments of learned counsel for the parties and perused the material available on record with their able assistance.

8. It is noted that in all 9 persons shown as proposed accused in the complaint and it was alleged that they were duly armed with pistols, hatchets and sticks however, it is surprising to note that as per medical certificate, available on record, no fire arm injury was received by the

injured Azhar and Ghazanfar. On the contrary, the medical certificate issued by the office of Medical Superintendent Civil Surgeon, Services Hospital Hyderabad dated 24.05.2019, available on record, showing that the injury attributed to both injured was possibility result of an accident. For the sake of convenience, it would be proper to reproduce the said report submitted by Medical Board consisting upon seven (07) members who opined as under:

“The Members of Special Medical Board are of the unanimous opinion that the medico legal certificate number mentioned above in respect of injured Azhar s/o Nazeer Ahmed Leghari issued by Dr. Gulzar Ali, Medical Officer DHQ Hospital Tando Muhammad Khan is possibility of accidental injury cannot be ruled out”.

9. When the said report of Medical Board was confronted to learned counsel for the applicant for its reply, he has no satisfactory answer with him. It is also noted that Presiding Officer of the trial Court while passing the impugned order dated 15.11.2019 has partially allowed the application of the applicant by directing the applicant to appear before the concerned police station and record his statement u/s 154 Cr.P.C against proposed accused Shahid and Pervaiz. However, it appears that almost ten (10) months have been passed but the applicant has failed to comply with the said order and did not record his statement as stated supra which shows that perhaps the applicant wants to drag the proposed accused in criminal litigation. During the course of arguments, I have specifically asked the question as to why the applicant did not approach the concerned police station for recording statement despite of expiry of long period, again he has no satisfactory answer with him.

10. I have also perused the impugned order wherein the trial Court elaborately discussed each and every aspect of the case but the counsel for applicant has failed to point out any illegality and irregularity in it. It is also noted that proposed accused Abdul Sattar was armed with pistol but he did not use the same in the commission of offence whereas accused Mehrab was empty handed and there was only allegation against them that they have instigated the other accused persons.

11. Apart from above, Section 22-A(6) Cr.P.C, empowers the Justice of Peace for issuance of appropriate directions to the concerned police authorities on complaint for registration of a criminal case; however, these powers are not to be exercised in random manner without application of independent mind. The powers u/s 22-A(6) Cr.P.C are vested with Justice of Peace for dispensation of justice, but at the same

time, the Court would keep in mind that the said powers are never meant to be exercised in aid of injustice. The innocent persons would not be forced to go through the rigorous of multiplicity of proceedings provided by Criminal Procedure Code and Pakistan Penal Code. Justice of Peace has to keep in mind this aspect that any direction issued unnecessarily or in routine manner shall cause humiliation, harassment and mental agony to the proposed accused and it would take years to conclude the criminal trial of the case arisen out of any F.I.R.

12. Learned counsel for the applicant could not point out any legal and factual infirmity in the impugned order and also could not controvert what has been stated in the medical report furnished by Senior Members of the Doctors, which is on record. There is nothing on record that the learned Ex-Officio Justice of Peace has improperly exercised the discretion vested in him. Consequently, I find no force in the instant Criminal Miscellaneous Application, hence same is hereby dismissed along with pending application[s], if any.

JUDGE

Hafiz Fahad