

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
Cr. Misc. Appln. No.S- 281 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case.
3. For hearing of MA-4088/2020

12.10.2020.

Mian Taj Muhammad Keerio, advocate for applicant.
Mr. Mumtaz Ahmed Lashari, advocate for respondent No.5.
Mr. Shahid Ahmed Shaikh, D.P.G for the State.

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Irshad Ali Shah J; It is alleged by private respondent that the applicant and others were allowing entry of the individuals to receive aid under *Ahsas Program*, after acceptance of bribe, on protest they maltreated him and then involved him in a false case, therefore, he by making an application u/s 22-A & B Cr.P.C sought for direction from Ex-Officio Justice of Peace, Umerkot against SHO, P.S. Bodar Farm District Umerkot for recording his FIR, it was issued accordingly by him vide his order dated 30.06.2020, which is impugned by the applicant before this Court by way of instant Criminal Misc. Application u/s 561-A Cr.P.C.

2. It is contended by learned counsel for the applicant that the FIR of the incident has already been recorded by police as crime No.24 of 2020 u/s 324, 353, 506/2, 337-A(i),F(i),147,148, 149,101 and 504 PPC PS Bodar Farm District Umerkot; the private respondent in order to save his skin from the legal consequence of above said FIR is intending to involve the applicant and others in a false case malafidely and the second FIR of the same incident even otherwise is not

permissible at law. By contending so, he sought for setting aside of the impugned order. In support of his contention he relied upon case of ***Mst.Sughran Bibi vs The State (PLD 2018 Supreme Court 595)***.

3. Learned D.P.G for the State did not support the impugned order by contending that it has been passed without providing chance of hearing to the proposed accused or calling for report from police, therefore, same being illegal is liable to be set-aside. In support of his contention he relied upon case of ***Younas Abbas and others vs Additional Sessions Judge, Chakwal and others (PLD 2016 SC 581)***.

4. Learned counsel for the private respondent by supporting the impugned order has sought for dismissal of the instant Crl.Misc.Application by contending that the narration made by the private respondent in his application constitutes a cognizable offence and it was not the case of second FIR but that of counter version of the incident, which could be recorded. In support of his contention, he relied upon case of ***Mrs. Ghanwa Bhutto and another vs Government of Sindh and another (PLD 1997 Karachi 119)***.

5. I have considered the above arguments and perused the record.

6. The report of the police was awaited; therefore, learned Ex-officio Justice of Peace Umerkot ought not to have passed the impugned order that too without providing chance of hearing to the applicant and others. The FIR of the incident has already been recorded at the instance of the proposed accused. If for the sake of

argument, it is believed that the private respondent is intending to lodge his FIR as a counter version to the above said FIR then the contention of learned counsel for the applicant that the private respondent is intending to involve the applicant and others in a false case to save his skin from legal consequences of above said FIR could not be lost sight of. It constitutes an act of malafide.

7. In case of ***Rai Ashraf & others vs. Muhammad Saleem Bhatti & others (PLD 2010 SC-691)***, it has been held by the Hon'ble Apex Court that;

“Validity---Dispute between parties was over such house---Applicant had secured restrain, order against respondent from Civil Court, and for its violation, he had a remedy before Civil Court---Applicant had an alternate remedy to file private complaints against respondent---Applicant had filed another application before Ex-officio Justice of Peace/Additional Sessions Judge to restrain public functionaries from taking action against him under Lahore Development Authority Act, 1975, Rules and Regulations framed thereunder---Application for registration of FIR had been filed with malafide intention.”

8. In view of above, the impugned order is set aside. The private respondent however may exhaust his remedy under section 200 Cr.PC, if so is advised.

9. The instant Crl.Misc.Application is disposed of accordingly.

JUDGE