

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
C.P.No.S-651 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objections
2. For hearing of MA- 7148/2015
3. For hearing of main case.

26.10.2020.

Mr. Muhammad Hashim Laghari, advocate for petitioner.

Mr. Mazhar Hussain Kalwar, advocate for respondent No.3.

Mr. Wali Muhammad Jamari, A.A.G.

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Irshad Ali Shah, J: The facts in brief necessary for passing the instant order are that the applicant and others allegedly after having formed an unlawful assembly and in prosecution of their common object not only maltreated the private respondent but robbed him of his belongings and then went away by setting hedge of his house on fire thereby his four goats lost their lives and wheat stored therein sustained damage, for that he lodged an FIR which was recommended by the police to be cancelled under "C-class" but such recommendation was not approved by learned Civil Judge & Judicial Magistrate-III, Nawabshah vide his order dated 13.07.2015, thereby he took cognizance of the incident/offence directing the police to submit report u/s

173 Cr.P.C, which is impugned by the applicant before this Court by way of instant petition.

2. It is contended by learned counsel for the petitioner that the petitioner being innocent has been involved in this case falsely by the private respondent in order to satisfy his dispute with him over landed property; the FIR of the incident was lodged with delay of about five days and very case on the basis of honest investigation was recommended by the police to be cancelled under "C-class", such recommendation has not been accepted by learned trial Magistrate without lawful justification by way of impugned order, which being illegal is liable to be set-aside. In support of his contention he relied upon cases of *Farooq Sumar and others vs The State (2004 P.Cr.L.J 1023)* and *Syeda Afshan vs Syed Farukh Ali and 3 others (PLD 2013 p-423)*.

3. Learned A.P.G for the State and learned counsel for the private respondent by supporting the impugned order have sought for dismissal of instant petition by contending that the police was having no authority to have disbelieved the version of the private respondent. In support of their contention they relied upon cases of *Safdar Ali vs Zafar Iqbal and others (2002 SCMR 63)* *Talib Hussain vs*

The State and 3 others (2017 P.Cr.L.J 1559) and Aijaz Ali vs The State (PLD 2020 p-491).

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

5. The delay in lodgment of the FIR has been explained plausibly in FIR itself by the private respondent. Whatever is stated by the private respondent in his FIR is supported by his witnesses. In that situation, police was not justified to have disbelieved the private respondent and his witnesses by believing the statements of so called independent witnesses thereby declaring the applicant and others to be innocent. By doing so, the police apparently have exercised the powers of the Court. In these circumstances, learned trial Magistrate was right to have taken the cognizance of the incident / offence by directing the police to submit report u/s 173 Cr.P.C against the applicant and others, by way of impugned order which is not calling for interference by this Court in exercise of its constitutional jurisdiction. If the applicant and others are having a feeling that they being innocent have been involved in a false case by the private respondent then they may prove their innocence by joining their trial.

6. The case law which is relied upon by learned counsel for the petitioner is on distinguishable facts and circumstances. In case of *Farooq Sumar and others* (supra), learned trial Magistrate took the cognizance of the offence after recording statements of the complainant and his witnesses, such exercise was found to be unlawful. In the instant matter, no statement of the complainant or his witnesses is recorded by learned trial Magistrate before taking cognizance of the offence. In case of *Syeda Afshan* (supra) the police furnished report for disposal of the FIR under "B-class", it was disposed of by learned trial Magistrate under "C-class", such disposal was impugned before High Court by way of filing a petition, it was dismissed by High Court by making an observation that the Magistrate has rightly exercised his discretion. In the instant matter, no issue of disposal of case from "B" to "C" class is involved.

7. In view of the facts and reason discussed above, the instant petition is dismissed along with listed application.

JUDGE