

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
Cr. Misc. Appln. No.S- 365 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case.

08.11.2019.

Mr. Abdul Razaque Dasti, advocate for applicant.
Mr. Pervaiz Tariq Tagar, advocate for respondent
No.4.
Ms. Rameshan Oad, A.P.G

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The facts in brief leading to passing of instant order are that the applicant by way of filing an application u/s 22-A and B Cr.P.C sought for direction against SHO PS Jam Datar District Shaheed Benazirabad to record his FIR against the proposed accused for allegedly having committed mischief by causing damage to their houses and taking away their belongings and individuals. It was dismissed by learned Ist. Additional Sessions Judge / Ex-officio Justice of Peace, Shaheed Benazirabad vide his order dated 20.10.2017.

2. It is contended by learned counsel for the applicant that the cognizable offence was committed by the proposed accused and learned Ist. Additional Sessions Judge / Ex-officio Justice of Peace, Shaheed Benazirabad ought not to have dismissed the application of the applicant. By contending so,

he sought for direction against SHO PS Jam Datar to record FIR of the applicant for the above said offence.

3. Learned A.P.G for the State and learned counsel for the respondent No.4 by supporting the impugned order have sought for dismissal of the instant application by contending that the applicant is intending to involve the police personals in a false case as they may not discharge their lawful duty against applicant and his relatives, who are having criminal record.

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

5. The applicant approached learned Ist. Additional Sessions Judge / Ex-officio Justice of Peace, Shaheed Benazirabad for recording his FIR with delay of about three months, such delay could not be ignored. The applicant is disputed with his relatives and such litigation admittedly is going on between them before the Courts having jurisdiction. If, for the sake of arguments, it is believed that the alleged incident has taken place and for that the FIR of the applicant is not being recorded by the police then alternate and adequate remedy is available to the applicant to be exhausted by him in event of advice by way of filing a Direct Complaint

of the incident before the Court having jurisdiction. In these circumstances, learned Ist. Additional Sessions Judge / Ex-officio Justice of Peace, Shaheed Benazirabad was right to dismiss the application of the applicant u/s 22-A and B Cr.P.C by making the following observation;

“Admittedly, the brothers of the applicant namely Mumtaz Ali, Qurban Ali and Aijaz Ali are nominated accused in FIR No.45/2017 lodged U/s 324-Q, 337-H(ii), 147, 148 PPC at P.S Jam Dattar and have been shown as absconders in the Challan submitted before the concerned Court of law. It is also admitted fact that on the same set of facts the applicant has approached the Hon’ble High Court of Sindh at Hyderabad, which is pending adjudication. It is also a fact that there is a delay of about three months in the happening of the alleged incident as shown in the application and in filing of the instant application. Nowhere such delay has been explained by the applicant. Moreover, the learned counsel for the applicant refers an order dated 07.08.2017, passed by the Hon’ble High Court of Sindh at Hyderabad, but surprisingly applicant does not shout regarding the incident to have happened on dated 19.07.2017. Such state of affairs indicates malafide on the part of applicant in approaching this Court. It is by now a settled principle of law that malafide vitiates the most solemn declaration.”

6. In view of the facts and reasons discussed above, it could be concluded safely that no case for making interference with the impugned order is made out. Consequently, the instant application is dismissed.

JUDGE