

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Misc. Application No. S-142 of 2019.

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| Date | Order with signature of Hon'ble Judge |
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FOR HEARING OF CASE.

20.9.2019.

M/S .Riaz Hussain Dero and Ashique Hussain
Kalhor, advocates along with the applicant.

Mr. Muhammad Noonari, D.P.G.
ASI Muhammad Paryal Mallah, Proposed Accused

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ARSHAD HUSSAIN KHAN.J:Through this criminal miscellaneous application, the applicant has called in question the order dated 06.07.2019, passed by learned Additional Sessions Judge/Justice of Peace, Mehar, dismissing the Criminal Misc. Application bearing No. 1123 of 2019 under Section 22-A and 22-B Cr.P.C filed by the applicant seeking directions to the SHO concerned for registration of FIR.

2. Brief facts of the present case as narrated by the applicant in his application under section 22 A and B Cr.P.C, are that on 29.6.2019 he along with Abdul Rasheed Dero and Fida Hussain Rind were returning from Mehar on a motorcycle and at about 2.30 p.m when they reached at Sarwar Noonari brick-kiln, near Mehar, they were intercepted by a police mobile directing the applicant party to stop on which they stopped the motorcycle; proposed accused Alam Bhangar and ASI Mallah and other police officials stepped down from the police mobile; out of them, proposed accused Alam Bhangar snatched key of the motorcycle, conducted personal search of the applicant and took out his cash Rs.25000/- whereas the proposed accused ASI Muhammad Paryal snatched cash Rs.3000/= from Ali Raza when they resisted, accused maltreated them severely and snatched their motorcycle bearing Chassis No.EA-02007 Engine No.020385 and went away. Subsequently, the applicant alongwith his witnesses approached the SHO Faiz Abad for registration of FIR and also requested for return of his motorcycle as well as amount robbed to which he refused and rather the SHO concerned extended threats to the applicant

and others to keep quiet else they will be booked in Cr.Case No.29 of 2019 in which he has already booked more than 40 persons. Faced with the above situation, the applicant approached learned Court of Sessions Judge/Justice of Peace, Dadu, by filing application U/S 22-A and 22-B Cr.P.C seeking directions to the SHO concerned for registration of FIR, which was assigned to learned 1st Additional Sessions Judge, Mehar for disposal in accordance with law, who dismissed the same, vide order dated 06.7.2019, which is impugned in the present proceedings.

3. Learned counsel for the applicant while reiterating the facts mentioned in the application has contended that the facts of the incident clearly reflects the commission of cognizable offence hence the SHO concerned was duty bound to register the FIR. He has further contended that learned Justice of Peace was supposed to form his independent opinion as to whether a cognizable offence is made out from the facts of incident narrated by the applicant or not but instead he totally relied upon the report of the SHO, PS Mehar, against whom the allegations have been levelled by the applicant in the application. He further argued that learned Justice of Peace while passing the impugned order has also failed to consider that under provision of section 154 Cr.P.C, the Officer In-charge of a Police station is required and bound to register FIR, if from the information a cognizable offence is made out. He further argued that learned justice of peace while passing the impugned order blindly relied upon the report submitted by the SHO, PS Mehar, and assumed that the applicant has approached the court against the police officials as counter blast for lodging FIR No.29 of 2019 against his purported uncle namely Haji Nazeer Dero, which fact is absolutely incorrect, the applicant has no relation of whatsoever with the said Haji Nazeer Dero. Moreover, upon inquiry, it came into the knowledge of the applicant that the said case has already been disposed of and all the accused persons nominated in the said FIR have been acquitted. Learned justice of Peace without ascertaining the fact that whether the applicant has any relation with said Haji Nazeer Dero has passed the impugned

order which in the given circumstance is contrary to both law and facts, hence the same is not sustainable in law and liable to be set aside.

4. Learned D.P.G. Sindh appearing on behalf of State has supported the plea of the applicant and submits that from the perusal of the facts of the incident narrated by the applicant in his application under section 22-A and 22-B Cr.P.C, it appears that a cognizable offence is made out, therefore, he opposed the impugned order.

5. Conversely, proposed accused, ASI Muhammad Paryal Mallah of P.S Faridabad vehemently opposed the registration of a case against police personnel who performed their duties in accordance with law. He has contended that the story narrated by the applicant in his application is false and concocted one. He has also submitted that the present applicant has approached learned Justice of Peace as well as this Court with malafide intention and ulterior motives in order to lodge a false FIR as counterblast against FIR No.29/2019, which according to him was lodged against the uncle of present applicant. He further submits that the allegations leveled in the present application as well as in the application U/S 22 A and 22-B Cr.P.C are false and no such incident has taken place and the motorcycle and amount as alleged is neither with him nor with any of the proposed accused. He further submits that order passed by learned Justice of Peace is fair and just and the present application is liable to be dismissed.

6. I have considered the arguments advanced by the learned counsel for the applicant, proposed accused as well as learned DPG and perused the material brought on the record.

7. Before going into any further discussion, it would be advantageous, for the sake of ready reference, to reproduce Sections 154 & 155 Cr.P.C.:-

“154. Information in cognizable cases. Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to

writing as aforesaid shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf.

155. Information in non-cognizable cases- (1) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the [Magistrate].

(2) **Investigation into non-cognizable cases.** No police-officer shall investigate a non-cognizable case without the order of a Magistrate of first or second class having power to try such case [or send the same for trial to the Court of Session].

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case."

From the perusal of above provisions, it appears that nowhere the police is restrained from registering the FIR. Police is duty bound to reduce information relating to the commission of a cognizable offence into writing under section 154 Cr.P.C. or otherwise act under section 155 Cr.P.C.

Further, if the informant gives false information, there is provision under section 182 PPC to come into force. For the sake of ready reference, section 182 PPC is reproduced as under:-

182. False information with intent to cause public servant to use his lawful power to the injury of another person- Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant:-

- (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or
- (b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with an imprisonment of either description for a term which may extend to six months, or with fine which may extend to [three thousand rupees], or with both.

8. The above referred provisions reflect that when a thing was required to be done by law in a particular manner it should be done in that manner or not at all. The SHO is duty bound to record the statement of the complainant under section 154 Cr.P.C. in accordance with law, if from the contents thereof a cognizable offence is made out, he shall register FIR and if such first information is found to be false during course of the investigation, legal action can be initiated against the complainant. In case of cognizable offence, SHO or anyone else has no authority to refuse to record complainant's statement and to refuse to register an FIR. **Further, it is needless to say that nobody is over the law of land.** In the instant case, the allegations have been levelled against the police personnel and the report of the police was relied upon by the learned justice of Peace for dismissal of the application of the present applicant. It is added that the assertion narrated by the person could be either correct or incorrect, but how it can be said that the application filed by the applicant is based on malafide and ulterior motives without any investigation. As stated above, the falseness or truthfulness can always be determined during the course of investigation.

9. In view of above facts, circumstances, instant criminal miscellaneous application is **allowed** with direction to the concerned SHO to record the statement of applicant and if a cognizable offence is made out, register FIR forthwith, however, no arrest shall be made in respect thereof unless tangible evidence is brought on record.

The criminal miscellaneous application stands disposed of.

JUDGE