

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P.No.D-552 of 2018

DATE **ORDER WITH SIGNATURE OF JUDGE(S)**

BEFORE:

*Mr. Justice Abdul Maalik Gaddi,
Mr. Justice Fahim Ahmed Siddiqui,*

16.10.2018.

Mr. Muhammad Jamil Ahmed, Advocate for the petitioners.

Mr. Altaf Sachal Awan, Advocate for respondent No.1.

Mr. Muhammad Ismail Bhutto, Addl.A.G alongwith ASI/I.O
Muhammad Moosa Brohi P.S Jam Dattar, District Shaheed
Benazirabad.

Ms. Rameshan Oad, A.P.G.

ORDER

ABDUL MAALIK GADDI, J:-- Through this constitutional petition, the petitioners have assailed the legality and propriety of the order dated 09.02.2018, passed by the learned Civil Judge & Judicial Magistrate-III, Nawabshah, on a final report under Section 173 Cr.P.C submitted by the I.O in Crime No.03 of 2018 under Sections 337A(i), 337L(ii), 504, 506/2, 147, 148, PPC of P.S Jam Dattar, Shaheed Benazirabad, for disposal of the F.I.R. in "C" Class, whereby the learned Magistrate while disagreeing with the opinion of the Investigating Officer has taken the cognizance of the case with direction to the I.O to submit challan sheet in the prescribed form within five days after receipt of the order.

2. Concisely, the facts as disclosed in the F.I.R are that on 28.12.2017, the complainant namely Abdul Razzaque S/o Ghulam Nabi Solangi, alongwith his father Ghulam Nabi and brother Abdul Nabi, was going to Nawabshah city and at about 08.30 at a street, accused Asghar Ali, Abdul Qadir having lathis,

Rajab Ali armed with iron rod, Sikandar Ali having lathy in his hand, Imdad Ali and Ali Haider having lathis in their hands were standing there. It is further alleged in F.I.R. that on seeing complainant party, accused Asghar Ali, having taken out pistol from fold of his Shalwar made straight fire and abused to the complainant party and said that he would not leave the complainant party and would kill them. It is alleged in F.I.R. that accused Asghar Ali caused the butt of pistol to the father of the complainant, the accused Rajab Ali caused iron rod to the brother of complainant Abdul Nabi on right arm and accused Abdul Qadir caused lathi to the brother of complainant on head and other parts of his body. After obtaining medical letter, treatment was provided to the injured at PMC Nawabshah.

3. Perusal of record shows that after registration of the F.I.R of the incident, the investigation was carried out by the I.O of the case, who after due investigation of the case submitted report to the concerned Magistrate by recommending the case for disposal under "C" Class, which has been declined by the learned Magistrate, who has taken the cognizance of the case vide impugned order dated 09.02.2018, which order has been impugned in this petition.

4. It is contended by the learned Counsel for the Petitioners that the impugned order passed by the learned Magistrate is against the law and facts; that the alleged offence is concocted, summarized and false one; that there is sufficient material in favour of the petitioners / accused, which shows that they are not involved in this false case; that during course of investigation the I.O. recorded the statements of independent persons which duly supported the version of petitioners/accused, except that no any material/evidence came on record which connected the accused in commission of the alleged offence; that the petitioners were involved on the ground of plot otherwise the allegations against them are

false and fictitious; that the report of the I.O has based upon facts and circumstances but the same were ignored by the learned Magistrate without any reason or lawful justification, who pleased to pass the impugned order in haphazard manner without applying the judicial mind; that as per objections in Criminal Miscellaneous Application No.2272/2017 filed by the brother of respondent No.1 namely Abdul Nabi, he was not available at the time of incident which was shown in instant F.I.R. No.03/2018 of complainant of this case then how it is possible that he received injuries from the hands of petitioners / accused, which shows that the respondent No.1/complainant in collusion with each other falsely implicated the petitioners/accused only on the sole dispute over the plot as well as tried to save skin from the F.I.R. No.01/2018, which was lodged by the accused party against complainant party, but the learned Magistrate failed to consider the opinion of the Medical Officer and passed the impugned order, which is liable to be set aside and the said F.I.R. may be quashed.

5. Conversely, the learned Additional A.G and Assistant P.G assisted by the learned counsel for the Respondent No.1 have supported the impugned order by arguing that the petitioners are nominated in the F.I.R. with specific allegations on the ground that at the time of incident present petitioners duly armed with pistols, iron rods and lathies caused injures to Ghulam Nabi and Abdul Nabi with their respective weapons. According to them, this incident has been witnessed by the prosecution witnesses, who in their statements recorded u/s 161 Cr.P.C, have supported the prosecution case, but the I.O of the case during investigation malafidely collected extraneous material and recorded statements of unconcerned persons just to give benefit to the accused persons and submitted report

in "C" class, which has rightly been declined by the learned Magistrate, who in his order has addressed all the material points involved in this case. They further argued that impugned order is perfect in law and facts and does not require any interference.

6. We have heard the learned Counsel for the parties and perused the record so made available before us.

7. It appears from the record that the accused/petitioners are nominated in the F.I.R with specific allegation that at the time of incident the present accused / petitioners duly armed with pistols, iron rods and lathies caused injuries with their respective weapons to the injured Ghulam Nabi and Abdul Nabi. It also appears from the record that there are prosecution witnesses who have supported the case and then there are defense witnesses, who have stated otherwise. Obviously as to which witness can be more reliable than the order can be sorted out only after trial and recording of evidence. In this regard we are fortified with the case of **Sabir Ali Arain versus The State** reported in 2011 P.Cr.L.J 732 (Karachi) in which this Court held that veracity of witnesses could be determined by the trial court only after recording of evidence. In these circumstances, it is necessary that trial must be held to sift the grain from the chaff to reach the truth. Further it needs no mention that to determine the guilt and innocence of alleged accused of criminal case is only domain of competent court of jurisdiction and investigation officer has no such powers to adjudicate the criminal case during investigation. I/O is supposed to collect the evidence in favour or against the case and put the same before Magistrate. In the case of **MUHAMMAD BASHIR versus STATION HOUSE OFFICER, OKARA CANTT. and others** reported in PLD 2007 Supreme Court 539, in which Honourable Supreme

Court observed that “Impression that investigation officer has the power to pronounce upon the guilt or innocence of an accused person was a grave misconception, because such an opinion expressed by an I.O was not even admissible in evidence at the trial. It is also settled principle of law that ipse dixit of police is not binding upon the court”. Reliance is placed on the case of **ABID ALI alias ALI versus The STATE** reported in 2011 SCMR 161. Apart from that in this case one P.W is in injured condition and there is also medical evidence on the record.

8. Admittedly, in this case the learned Magistrate has taken cognizance of the offence, therefore, remedy is also available to the petitioners/accused to approach the trial Court for redressal of their grievance, if they so desired. In this context we are fortified by the case of **DIRECTOR-GENERAL, ANTI-CORRUPTION ESTABLISHMENT, LAHORE and others versus MUHAMMAD AKRAM KHAN and others** reported in PLD 2013 Supreme Court 401.

9. In view of the above facts and circumstances of the case, no perversity, illegality or incorrectness is found in the impugned order. Learned Magistrate while passing the impugned order dated 09.02.2018 has appreciated all the facts and documents available on record. No illegality has been pointed out. We, therefore, under the facts and circumstances of the case, while maintaining the impugned order dismissed the instant petition alongwith listed application.

JUDGE

JUDGE