

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
C.P.No.D-6845 of 2017

Before:  
Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Irshad Ali Shah

Muhammad Ismail..... Petitioner

Versus

Shad Ahmed and others..... Respondents

Date of Hearing: 13.02.2020

Date of Decision: 13.02.2020

Mr. Muhammad Hanif Qureshi, advocate for petitioner.

Mr. Jan Muhammad Khuhro, AAG a/w I.O. Sabir Ali.

Mr. Ali Haider Saleem DPG.

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**ORDER**

**IRSHAD ALI SHAH, J:-** The facts in brief necessary for disposal of instant petition are that the petitioner lodged an FIR bearing Crime No.102/2017 under section 382, 34 P.P.C. with P.S.Bin Qasim, in respect of Oil Tanker, same after due investigation was recommended by police to be cancelled under "B" Class. It was cancelled but under "C" Class by learned IXth Judicial Magistrate Malir, Karachi vide his order dated 21.08.2017, which has been impugned by the petitioner before this Court by way of instant petition.

2. It is contended by learned counsel for the petitioner that there was recovery of Oil Tanker; the conclusion of the police was based on dishonest investigation, therefore, learned trial Magistrate ought not to have cancelled the FIR of the petitioner. By contending so, he sought for direction against the learned trial Magistrate to take cognizance of the offence.

3. Learned DPG for the state and learned AAG, with assistance of investigating officer of the case, by supporting the impugned order have sought for dismissal of the instant petition by contending that the petitioner after cancellation of his FIR under "C" Class has an alternate remedy to exhaust by way of filing a direct complaint of the incident before the court having jurisdiction.

4. We have considered the arguments and perused the record.

5. The petitioner is not an eye witness of the incident; he has lodged FIR of the incident with delay of about two months, such delay could not be lost sight of as it is not explained plausibly; his driver Waqar at the time of incident as per CDR collected by the police during course of investigation was not found available at the place of incident at the time of alleged incident. The stolen Oil Tanker as per private Faisla between the parties, was kept in "Amant" with Amanullah Afridi. The parties apparently were found to be disputed over settlement of account. In that situation, it would be unjustified to make interference with the impugned order. Consequently, the instant petition is dismissed.

JUDGE

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