

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

Cr. Misc. A. No. D – 19 of 2021

Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

Petitioner : Ghulam Nabi through Mr. Pervaiz Tariq Tagar,
Advocate

Mr. Shahzado Saleem Nahiyoon, D.P.G. along
with I.O. Insp. Ghulam Asghar

Date of Hearing & Decision : 14 .12.2021

ORDER

ADNAN-UL-KARIM MEMON J: Through instant Criminal Miscellaneous Application, the applicant has called in question the order dated 15.9.2021, passed by learned Anti-Terrorism Court, Shaheed Benazirabad in Crime No. 57 of 2021 registered under Section 386, 506/2, 337-H(2), 148, 149 PPC, whereby the learned Judge, while disagreeing with the report of Investigation officer, recommending the aforesaid crime for disposal under 'C' class, and unilaterally disposed of the case under 'B' class; and, meanwhile directed him to initiate proceedings against the complainant under Section 182 and 211 PPC on the premise that the statement of Complainant is false one.

2. Brief facts of the case are that applicant lodged above FIR alleging therein that he is shareholder in Golden Villas Scheme launched at Nawabshah and a compound wall is constructed around the Scheme; that alleged accused Qurban and his cousin Shoukat Ali used to demand Bhatta from him on sale of plots and bungalows otherwise they used to issue him threats of murder or damage to the compound wall; on 13.8.2021, he along with his relatives Asif Ali Siyal, Luqman Rind, and other laborers were available at site, when at about 9.00 a.m. accused Qurban armed with pistol, Shoukat Ali armed with repeater and eight unknown persons out of whom four were having guns while rest of them were having iron rods, came there, made a commotion, created terror by making aerial firing at the project and

caused damage to the compound wall of Golden Villas, due to non-payment of Bhatta.

3. After registration of FIR, investigation was conducted by I.O of ATMC Shaheed Benazirabad and submitted report recommending the case under 'C' class for the reasons that Complainant lodged the FIR on misconception against the accused as neither any Bhatta was demanded from him nor any firing was made. The learned Judge, Anti-Terrorism Court, Shaheed Benazirabad dis-agreeing with the report of I.O disposed of the case under 'B' class and directed him to initiate proceedings under Section 182 & 211 PPC against the Complainant/applicant. The concluding part of the order is as under:-

"I have perused the contents of FIR and police papers as well as scrutiny note of A.P.G. It is a matter of record that the complainant initially leveled serious allegations upon the accused in FIR for demand of Bhatta from him and on non-fulfillment of such demand he has alleged that they fired upon him with the intention to cause harm and injury and to create terror and panic situation, but now the mind of complainant has reverted his statement, which shows that the complainant had lodged such FIR falsely against the accused, there is specific nomination and specific allegation of demand of Bhatta and causing firing, hence it cannot be said that it was the misconception of the complainant, therefore, the opinion of the I.O in the report put forth Under Section 173 Cr.P.C. as well as the opinion of the A.P.G. appears to be based on illogical sense and does not attract a prudent mind, which indeed is liable to be condemnable, hence I approve this summary under B-class with directions to concerned I.O to initiate proceedings U/s. 182 and 211 PPC as a statement of the complainant is appearing on false information. Let the copy of this order be forwarded to the Prosecutor General and Deputy Inspector General of Police Shaheed Benazirabad. Order accordingly".

4. Learned counsel for the applicant has argued that the impugned Order is void ab-initio, unlawful and illegal as such is liable to be set-aside; that eyewitnesses of the incident have supported the version of complainant; that since the accused persons are highly influential and dangerous persons therefore they arranged the independent witnesses who disclosed the distorted story in order to defeat the actual facts of the incident; that alleged witnesses have admitted the arrival of accused persons and firing from their weapons but stated that the said firing was made to kill a snake which does not appeal to the prudent mind; that the alleged independent witnesses also admitted the fact that one portion of compound wall was demolished by the persons having lathis in their hands; that one alleged independent witness by caste Memon and others were laborers but they were under the influence and threats of accused persons, however, they admitted the incident in other terms to misguide the trial court; that specific role is

attributed to accused persons in the commission of offence; that learned trial court failed to consider the motive of commission of offence at the hands of accused persons; that learned trial court failed to consider that during investigation the guilt of the accused persons have been proved as such it is a fit case for submission of challan; that delay in registration of FIR is properly explained by the complainant as he is a heart patient; that FIR was immediately lodged as such the question of fabrication and concoction does not arise; that specific role is assigned to accused but learned trial court did not consider such fact and passed the impugned order; that there is nothing on record to show that the accused persons are innocent; however, the statements of witnesses fully supported the prosecution case; that the offence is heinous and without trial the accused cannot be declared innocent; that there is no other efficacious and prompt remedy except to file the instant Criminal Miscellaneous Application. Learned counsel lastly prayed for allowing the instant Application with directions to the trial court to proceed with the trial on merit.

5. Learned A.P.G. assisted by learned counsel for the accused opposed the present application and prayed for dismissal of the same.

6. We have heard learned counsel for the parties and perused the material available on record as well as impugned order dated 15.09.2021, whereby the learned Judge Anti-Terrorism, Shaheed Benazirabad did not agree with the recommendation of Investigating Officer, concerning the disposal of the criminal case under 'C' class.

7. Primarily, the language of Section 182 PPC does not refer to any private person and it relates "to cause public servant to use his power" and in case such information is found false and public servant on such false information has taken any action or omitted to act, then such public servant can initiate proceedings under Section 182 of the PPC. The provisions of Section 182 of the PPC are reproduced below:-

"182. False information with the 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 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. It is the public servant who could be aggrieved if based on any false information he has taken certain steps or he has not done something as a consequence of such false information which he otherwise was supposed to do. The allegation against the complainant is that he gave information to a public servant; and later on, in the investigation it was found false. In such circumstances, the investigating officer is left with no option but to submit report to the concerned court for such action. Here Investigating officer recommended disposal of the aforesaid F.I.R in cancelled class, not under B class, however, the learned Judge took cognizance of the matter and directed the Investigation Officer to proceed against the complainant under Section 182 and 211 PPC.

9. Primarily, the proceeding under Section 182 of the PPC against the complainant on account of providing false information to the Incharge Police Station is a penal action. In the case in hand, the police have submitted a report under Section 173 of the Cr. P.C for disposal of the case in class “C” meaning thereby the I.O has not found the information as maliciously false in disposing of the case after registration of FIR. However, the learned Judge had disposed of the report under Section 173 of the Cr. P.C in class “B” with the direction to the police to initiate proceeding under Section 182 of the PPC against the complainant and that is why the complainant appears to be aggrieved by such opinion of the learned Judge.

10. It is well settled that though an order passed under Section 173 Cr.P.C is an administrative order, the Magistrate in canceling a registered criminal case is nonetheless required to act judicially. The party is then left free to institute a complaint on the same facts.

11. In the present case, the Investigating officer disposed of the aforesaid F.I.R under ‘C’ class and submitted his report to the learned trial Court; however, the learned trial Court disagreed with the report of Investigating officer and took cognizance of the matter by converting the ‘C’ class report into ‘B’ class by directing the Investigating officer to take action against the Complainant under Section 182 Cr.P.C before the competent Court of law having jurisdiction. In such circumstances, the remedy available to the complainant to file a

“Private Complaint” under Section 200 Cr.P.C, was taken away by the impugned Order.

12. In these circumstances, we are inclined to accept the investigation report submitted by the investigating officer for disposal of Crime No. 57 of 2021 registered under Section 386, 506/2, 337-H(2), 148, 149 PPC, under C-Class. Accordingly, the impugned order dated 15.9.2021, passed by learned Anti-Terrorism Court; Shaheed Benazirabad is modified, to the above extent.

13. Instant Cr. Miscellaneous Application stands disposed of in the above terms.

JUDGE

JUDGE

**Karar_Hussain/PS **