

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
Cr. Misc. Appln. No.S- 106 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For orders on MA-1548/2019
3. For hearing of main case.
4. For orders on MA-1549/2019

18.03.2021.

Mr. Dilbar Khan Laghari, advocate for applicant.
Ms. Safa Hisbani, A.P.G for the State.
Mr. Ashfaque Ali Khaskheli, advocate for private
respondent.

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It is the case of the private respondent that he was not only fired at, but was caused fracture of his tooth and finger by the applicant and others in order to settle his dispute with them over account. On refusal of the police to record his FIR he by making an application u/s 22-A and B Cr.P.C sought for direction against the police to record his FIR, it was issued by learned Ex-officio Justice of Peace/2nd Additional Sessions Judge, Hyderabad vide his order dated 11.02.2019, which is impugned by the applicant before this Court by way of instant Criminal Misc. Application.

2. It is contended by the learned counsel for the applicant that no innocent as alleged by the private respondent has taken place; therefore, learned Ex-officio Justice of Peace/2nd Additional Sessions Judge, Hyderabad ought not to have directed the police to record FIR of the private respondent by way of impugned order, same being illegal is liable to be set-aside.

3. Learned A.P.G for the State and learned counsel for the private respondent by supporting the impugned order has sought for dismissal of the instant Criminal Misc. Application by contending that the applicant and others have committed a cognizable offence.

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

5. The facts made at the private respondent with intention to commit his murder proved to be ineffective. No medical certificate with regard to the injuries sustained by the private respondent has been produced before this Court, by either of the party. Admittedly, the parties are disputed over settlement of Accounts. In these circumstances, learned Ex-officio Justice of Peace/2nd Additional Sessions Judge, Hyderabad ought not to have directed the police to record FIR of the private respondent by way of impugned order, it is set-aside with direction to the private respondent to have a recourse under section 200 Cr.P.C.

6. In case of *Rai Ashraf and others vs Muhammad Saleem Bhatti and others (PLD 2010 Supreme Court 691)* it has been held by Hon'ble apex Court that;

"The learned High Court had erred in law to exercise discretion in favour of the respondent No.1 without realizing that the respondent No.1 had filed application before the Additional Sessions Judge/Ex-Officio Justice of the Peace to restrain the public functionaries not to take action against him in accordance with the LDA Act 1975, Rules and Regulations framed thereunder, therefore, respondent No.1 had filed petition with mala

fide intention and this aspect was not considered by the learned High Court in its true perspective.”

7. The instant Criminal Misc. Application is disposed of accordingly along with listed application[s].

JUDGE

Ahmed/Pa