

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Misc. Application No. 230 of 2022

Date	Order with Signature(s) of Judge(s)
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Fresh Case.

1. For order on Misc. Application No. 4809/2022 (Urgency Application).
2. For order on Misc. Application No. 4810/2022 (Exemption Application).
3. For hearing of main case.

09.05.2022

Mr. Muhammad Shahnawaz Khan, advocate for applicant.

1. Urgency application is granted.

- 2-3. The applicant herein filed Cr. Misc. Application No. 1450/2021, under section 22-A & B, Cr.P.C. (*Re: Muhammad Sarfaraz vs. The State through S.H.O. P.S. Joharabad at Karachi and another*) before the learned Sessions Judge/Ex-Officio Justice of Peace, Karachi-Central seeking, *inter alia*, direction to respondent No. 1 (*S.H.O. P.S. Joharabad*) to lodge F.I.R. under section 448,457,427,506-B, P.P.C. against the proposed accused (*respondents No. 3 to 5*) and their companions, and recover the physical possession of the House No. R-76, Block-14, F. B. Area, Karachi ("*subject property*") from said persons and handover the same to him. The Cr. Misc. Application was heard and dismissed by the learned Additional Sessions Judge-VII, Karachi-Central vide order, dated 18.10.2021 considering the report of respondent No.1 that the dispute between the parties was of civil nature. It is against said order, the instant Cr. Misc. Application has been preferred by the applicant, under section 561-A, Cr. P.C.

Learned counsel for the applicant contends that the impugned order is not sustainable in law as the lower Court did not consider the merits of the case and decided the same in very hasty manner; that the applicant made out case for lodging F.I.R. but the learned Justice of Peace has erred while passing the impugned order as the same was passed without applying his judicious mind; therefore, the same is liable to be set aside.

It is alleged that the applicant is the duly constituted attorney of one Arsalan Ahmed, who is the owner with possession of the subject property, vide Sale Deed registered at No.1288, Book No. I, with Sub-Registrar Gulberg Town, Karachi. It is also alleged that the applicant had already instituted Civil Suit No.677 of 2021 before the learned IVth Senior Civil Judge, Karachi-Central on 20.05.2021 by arraying respondent No.5 as defendant No.3 before filing of the Cr. Misc. Application. It is case of the applicant that in the month of June 2021, he was renovating the subject property when respondent No.5 made a report at police helpline "15" against him, who was called at police station where it was mutually agreed between the parties that no one among the claimant parties shall enter or try to take possession or raise construction upon the subject property without Court's order. Thereafter, 23.08.2021 respondent No.5 filed his written statement in the civil suit claiming therein the physical possession of the subject property with him. Subsequently, in the midnight of 24/25 of August 2021, the applicant came to know that the said respondent was raising construction over the subject property, whereupon he approached to respondent No.3, the previous owner of the subject property, who called respondent No.4 and they issued threats to applicant on gun point for life and instructed him not to visit subject property. Later, on 03.09.2021, the Nazir of the said Civil Court inspected the subject property where respondent No. 4 & 5 were present and respondent No.4 disclosed that he was tenant in House No. R-77 and on query of the Nazir, the neighbors of the vicinity disclosed that the respondent No.3 to 5 had removed the entrance main gate of the subject property and raised a wall over the entrance and opened a gate between houses No.R-76 and No.R-77 to show their physical possession over subject property as part of House No.R-77 and thereby they illegally occupied the same.

It is an admitted position that the dispute of ownership of the subject property between the parties is sub judice vide Civil Suit No.677/2021 before the learned IVth Senior Civil Judge, Karachi-Central. Under the law, police has no

authority to recover physical possession of an immovable property under an F.I.R and hand over its possession to complainant. However, in case the proposed accused persons, who are also defendants in the aforesaid civil suit, have occupied the subject property during pendency of the civil suit, the applicant has a remedy before the said civil Court to file proper application in his said suit for the redressal of his grievances. Hence, there appears no illegality or irregularity in the impugned order requiring any interference of this Court under its inherent powers under Section 561-A, Cr.P.C. Accordingly, this Crl. Misc. Application is dismissed in limine, along with listed application.

JUDGE

Athar Zai