

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Misc. Application No. 528 of 2019

Date *Order with Signature of Judge*

For hearing of Case.

04.08.2022

Mr. Tassadduq Nadeem, Advocate for the Applicant/Complainant.
Mr. Khadim Hussain, Addl. Prosecutor General, Sindh.
Mr. Haresh Kumar, Advocate for the Respondent No.6/the accused.
None present for Respondent No.7.

ORDER

MUHAMMAD SALEEM JESSAR, J.- It is a simple case of the applicant / complainant that he (complainant) got registered FIR No.533/2019, under Section 468/471/420 PPC with P.S Gulshan-e-Iqbal, Karachi against respondents No.6 & 7 on 17.09.2019. The said FIR was investigated by SIO Muhammad Ramzan/respondent No.4. After thorough investigation, I.O/police reached at the conclusion that charge leveled by the applicant/complainant against accused/respondents was established, therefore, charge sheet in terms of section 173 Cr.P.C was prepared and it was also recommended by the District Public Prosecutor concerned on 10.10.2019. After legal-cum-usual formalities, said charge was submitted before the 7th Judicial Magistrate, Karachi (East) who instead of taking cognizance of the offence, disapproved the report under section 173 Cr.P.C and disposed of the FIR under 'C' class through his order dated 16.11.2019.

2. Learned counsel for the applicant/complainant submits that when police have submitted charge sheet against the respondents then the Magistrate concerned was required to take cognizance of the offence instead he had disapproved the report and disposed of the FIR under 'C' class. Learned counsel further submits that without recording evidence of the prosecution witnesses, the Magistrate was not competent to hold that the basic ingredients for sections 420/468 PPC read with Section 471 PPC were lacking as entire evidence of the prosecution was based upon documents which were required to be thrashed out / scrutinized by way of evidence which was not recorded. He went on to refer impugned order dated 16.11.2019 (available at page-27 of the Court file) and submits that the observations given by the Magistrate are unjustified; hence, submits that by granting this application, impugned order may be set-aside and directions may be issued to the Magistrate concerned to take cognizance of the offence and proceed with the trial.

3. Learned Addl. P.G, Sindh appearing for the State, supports the application and opposes the impugned order on the ground that no recommendation was made by the I.O regarding disposal of the FIR in question under 'C' class nor it was the prayer of the police, therefore, the Magistrate had wrongly discarded the charge sheet submitted by the police instead of taking cognizance of the offence. Learned Addl. P.G, Sindh next submits that the PWs who were examined by the I.O under section 161 Cr.P.C had fully supported the FIR, therefore, best course was to proceed with the trial rather than disposal of FIR under 'C' class for which there was no recommendation by the I.O or the prosecution. He, therefore, opposes the impugned order.

4. Learned counsel for respondent No.6 opposes the application and submits that the impugned order does not suffer from any illegality or infirmity; however, admits that the police, after thorough investigation, submitted the challan/charge sheet under section 173 Cr.P.C and no prayer or recommendation was made by the police regarding disposal of the FIR under 'C' class.

5. Heard arguments, record perused. Admittedly, the Magistrate had not recorded evidence of the prosecution witnesses and without recording evidence he (the Magistrate) cannot opine himself regarding establishment of the charges of the particular sections applied under the FIR; however, he, at the most, had taken cognizance of the offence and after recording evidence of the parties, should have decided the case on merits. Moreover, PWs who were nominated in the FIR were examined by the police under section 161 Cr.P.C and have fully supported the FIR; hence, view taken by the Magistrate cannot be said to be justified.

6. Since, non-acceptance of the challan/charge sheet by the Magistrate, is without legal justification, therefore, impugned order cannot be maintained. Accordingly, instant application is hereby allowed; consequently, impugned order dated 16.11.2019 passed by 7th Judicial Magistrate, Karachi (East) is hereby set-aside. Resultantly, challan/report under section 173 Cr.P.C submitted by the I.O/respondent No.4 shall be deemed to have been accepted. The Magistrate concerned, is hereby directed to proceed with the trial and after examination of prosecution witnesses as well as defense witnesses, decide the case in the light of charge sheet/investigation conducted by respondent No.4 and decide the case on merits after giving full opportunity of hearing to all the concerned / either side.

JUDGE