

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Misc. Appln. No. S – 35 of 2019

Date

Order with Signature of Hon'ble Judge

For hearing of main case**07.02.2020**

Mr. Mehboob Ali Wassan, AAG Sindh
 Mr. Khalil Ahmed Maitlo, DPG for the State

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Amjad Ali Sahito, J; Through instant Criminal Miscellaneous Application, the applicant/proposed accused has impugned the order dated 20.01.2016 passed by learned 2nd Additional Sessions Judge / Ex-Officio Justice of Peace Sukkur, whereby allowed the application filed by the private respondent / Shah Nawaz under Section 22-A and 22-B Cr.P.C , directing the SHO Police Station Dadloi to record the statement of private respondent u/s 154 Cr.P.C, if cognizable offence is made-out action be taken according to law.

2. On last date of hearing i.e. 20.01.2020 learned counsel for the private respondent / Shah Nawaz was directed to place on record medical certificate of the injured, because as per report of SHO he has given letter to the injured for his examination, treatment and certificate. Today private respondent is present, on enquiry about the medical certificate of the injured, he submits that no medical certificate is available with him and only the letter of SHO is available.

3. The claim of the private respondent is that on 25.7.2015, he along with his nephew Shahzado, Nazar Muhammad and other family members

were available in the house, when at about 11:00 am, there came proposed accused Muhammad Pinyal with pistol, Aftab Ali with hatchet, Aijaz Ali with lathi, Allahdino with lathi, on coming they told him that as to why has not transferred the khata of land in favour of Muhammad Pinyal. Out of them, proposed accused Aftab caused hatchet blow, whereas, rest of the proposed accused caused lathi blows to Shahzado. The private respondent and his family members entreated the proposed accused in the name of Almighty Allah, hence they rescued the injured and then got letter for treatment, examination of the injured from SHO and got admitted the injured at Taluka Hospital Pano Akil. Thereafter the private respondent approached the SHO for registration of his FIR, but on refusal, he approached the Ex-Officio Justice of Peace. The learned Ex-Officio Justice of Peace after calling the report from concerned SHO disposed of the application of private respondent thereby directing the SHO to record his statement.

4. Applicant Muhammad Pinyal is present and submits that he has purchased the land from the private respondent as well as from his father, hence due to such dispute the private respondent has tried to convert the civil dispute into criminal, hence has got the impugned order; that the SHO has submitted report before the Ex-Officio Justice of Peace that no such incident has taken place, even then the impugned order has been passed, which is against the facts. He prayed that the impugned order may be set-aside.

5. The private respondent Shah Nawaz is present and submits that though the injured Shahzado has sustained hatchet as well as lathi blows from the hands of the proposed accused, whereas, such letter for medical examination and treatment was issued by the SHO. He prayed that the impugned order is well-reasoned and speaking one therefore, does not call for any interference by this Court and same may be maintained.

6. Learned DPG for the State also supported the version of the applicant by contending that there was civil dispute between the parties over the purchase of agricultural lands by the applicant from the private respondent and his father, hence also prayed for setting-aside of the impugned order.

7. I have heard the applicant as well as private respondent and learned DPG appearing for the State. Admittedly, the version as setout in the memo of criminal miscellaneous application by the private respondent is not supported by the medical evidence, as on the last date of hearing, learned counsel for the private respondent was directed to place on record the medical certificate of the inured Shahzado, who allegedly sustained hatchet and lathi blows from the hands of the proposed accused in the incident, whereas, such letter was also issued by the SHO for his examination, treatment and medical certificate of the injured, but the private respondent has failed to produce any medical certificate, therefore, in such circumstances, the version of the private respondent at this stage cannot be believed as truthful. Furthermore, the applicant has stated that he has purchased agricultural lands from the private respondent and his father,

hence due to such dispute, the private respondent in order to develop undue pressure upon the proposed accused has tried to convert the civil dispute into criminal. The report furnished by the SHO of the Police Station before the Ex-Officio Justice of Peace shows that no such incident has taken place, whereas, only one injured has appeared at police station, who has been given the letter for treatment and examination. In view of the above, the instant Criminal Miscellaneous Application is allowed, consequently, the impugned order dated 20.01.2016 passed by learned 2nd Additional Sessions Judge/ Ex-Officio Justice of Peace is set-aside. However, private respondent is at liberty to file direct complaint of the incident, if so advised.

Judge

ARBROHI