

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CR. MISC. APPLICATION NO.89/2022

Date Order with signature of Judge

1. For hearing of main case.
2. For hearing of M.A. No.1691/2022.

04.03.2022

Mr. Muhammad Sharif Buriro advocate for applicant.
Mr. Jameel Ahmed Shah, Assistant Attorney General for Pakistan.

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ORDER

SALAHUDDIN PANHWAR, J. By this Criminal Miscellaneous Application, applicant has challenged the order dated 31.01.2022 passed by the Sessions Judge (*hereinafter referred to as the Appellate Court*) in Criminal Miscellaneous Application No.60/2021 whereby his Cr Misc. Application was dismissed while maintaining order dated 06.12.2020 passed by the 1st Judicial Magistrate, Karachi Central (*Hereinafter referred to as the Trial Court*) in Criminal Case No.1964/2020 arising out of FIR No.26/2020 u/s 16, 20, 21, 24 of PECA 2016, PS F.I.A., Cybercrime Circle, whereby his application questioning the identity of victim was deferred for decision at the time of judgment. Record reflects that during the course evidence of victim/PW Bushra Arif, counsel for accused challenged her identity either being Bushra Arif or Rida Arif or even challenged her being victim of the incident; that objection was noted down and even addressed the trial judge as according to counsel for accused name of such witness was not appearing in the column of witnesses but she was subsequently allowed to be examined on an application under section 540 Cr.P.C. in which name of the witness was given as Bushra Arif whereas as per CNIC and other documents her name was appearing as Rida Arif hence the witness was stranger to the case

and could have not been examined hence trial court was required to pass final order on his application under section 194, 195 and 196 PPC and was not supposed to defer the same.

2. Precisely relevant facts are that Muhammad Arif moved a complaint against accused person alleging therein that he displayed nude pictures of his daughter Bushra on social media, such complaint was investigated and accused was sent up for trial. During trial witness (victim) Bushra Arif appeared but here identity was challenged as CNIC was reflecting her name as Rida Arif though father name was same. On such objection matter was adjourned, FRC was called and as per FRC Muhammad Arif (complainant) was father of one daughter Rida Arif, though her educational certificates show Rida Arif but in challan her name was shown as Bushra. Several photographs were placed in prosecution file as matter pertains to flashing of nude pictures of victim Bushra Arif which were of the same girl Rida Arif who appeared in trial for recording her statement, hence trial court recorded statement and in cross examination such plea of identity was reiterated. Subsequently counsel for accused moved application under section 194, 195 and 196 PPC, that application was deferred by the trial court with the observation that same will be decided at the time of judgment. Counsel for applicant at this account has vehemently contended that issue of identity was disputed and trial court was required to decide the same during trial and thus deferment of order until judgment was not justified. This aspect was considered by the revisional court while relying upon certain case law and rejected the Criminal Revision Application.

3. I have heard learned counsel for applicant and learned Assistant Attorney General.

4. Learned counsel for applicant has contended that proceedings conducted by the learned trial court were without jurisdiction, coram-non-judice and tainted with gross irregularity while recording evidence of PW Rida Arif whose name was earlier shown as Bushra Arif; that her evidence was to be discarded by the learned trial court; that on his application no final order was passed as same was deferred for decision at final stage; which too is another irregularity. Learned counsel for applicant has relied upon 2021 YLR 2060, 2005 YLR 2325 and 2014 YLR 2473.

5. In contra, learned Assistant Attorney General while opposing the Application, contended that there is no illegality or irregularity committed by the trial court during the proceedings; that present Criminal Miscellaneous Application is not maintainable; that trial is at the verge of conclusion, present litigation is only to delay conclusion of the trial.

6. It is pertinent to mention here that a girl who is the victim and her father filed a complaint that was thoroughly investigated and challan was submitted alongwith photographs. Accordingly, appearance of witness before the trial court was quite justified as she was the victim and was willing to record her statement, on objection trial court verified her identity through various modes including FRC thus plea of accused while filing application that she was not the same lady, was not justified. Though trial court was required to dismiss that application but matter was deferred for deciding the same at the time of judgment.

7. It is not appealable to a prudent mind that a girl will put her honour and reputation at stake and come forward to rope an innocent man other than a person who committed the offence, without any reason and will appear before trial court. Trial court has also rightly examined her as she is the same person and complainant was father of Rida Arif and she is the only daughter of complainant. The photographs of the victim were available in the prosecution file, which have also proved the identity of the victim; therefore, her identity was not required to be decided. It is an admitted fact that the evidence of the victim has already been recorded and ample opportunity of cross-examination was provided by the learned trial Court to the applicant/accused. Thus, the application filed on behalf of the accused at this stage appears to be bereft of merits.

8. Keeping in view given circumstances, application under section 194, 195 and 196 PPC filed by accused side was not justified and shall be treated as dismissed. Trial court shall proceed further in accordance with law and decide the matter preferably within fifteen days after receipt of this Order.

Criminal Miscellaneous Application is dismissed.

J U D G E