

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

Criminal Miscellaneous Application No.S-161 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on M.A. No.3223/2022.

**08.04.2022**

Mr. Poonjo Ruplani, Advocate for the applicant.

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Urgency is granted.

It is alleged that the applicant and others after having formed an unlawful assembly and prosecution of their common object caused hatchet and lathie blows to PW Hakim Ali with intention to commit his murder and then went away by insulting the complainant and others, for that they were booked accordingly. On investigation, the applicant together with two more accused were found to be innocent and their names were placed in column No.2 of the challan sheet by the investigating officer by omitting certain penal sections, they were joined in the trial by adding the penal sections omitted by the investigating officer by learned Trial Magistrate vide order dated 10.02.2022 which is impugned by the applicant before this Court by preferring instant criminal miscellaneous application under section 561-A Cr.P.C.

It is contended by learned counsel for the applicant that the applicant being innocent is involved in this case falsely and he on investigation was rightly let-off by the police, therefore, he was not to have been joined in trial by learned Trial Magistrate by adding certain penal sections by way of impugned order, such order being illegal is liable to be set aside.

I have considered the above arguments and perused the record.

It is settled by now that the opinion of the police has got no binding effect on the Courts and Courts have got ample powers to join the accused let-off by the police by forming its own conclusion on the basis of material brought before it. In the instant matter, the applicant is named in the F.I.R with specific allegation of causing lathi blow to PW Hakim Ali with intention to commit his murder. Whatever is stated in F.I.R is taking support from ancillary evidence; therefore, the investigating officer of the case was not competent to have declared the applicant innocent on the basis of plea of alibi by rejecting the version of the complainant and his witnesses. By such act, the investigating officer has acted as a Court, which alone is competent to evaluate evidence. In these circumstances, learned trial Magistrate by joining the applicant in trial by adding certain penal sections by way of impugned order has committed no wrong, which may justify this Court to make interference with it. Consequently, instant Criminal Miscellaneous Application being misconceived is dismissed in *limine*. However, the applicant may prove his innocence by joining the trial if so advised to him.

**JUDGE**

Muhammad Danish\*