

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Misc. Application No. 343 of 2020

Crl. Misc. Application No. 348 of 2020

Date order with signature of Judge

For hearing of main case.

25th January, 2021

Mr. Shahid Hussain Soomro, Advocate for applicants in Crl. Misc. Application No.348/2020 and for respondents in Crl. Misc. Application No.343/2020.

Mr. Shahnawaz Ayub, Advocate for applicant/complainant in Crl. Misc. Application No.343/2020 and for respondent No.4 in Crl. Misc. Application No.348/2020.

Mr. Talib Ali Memon, APG.

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Omar Sial, J: On 9-11-2018 a person by the name of Altaf Hussain lodged an FIR against Abdul Sattar, Safeer Ahmed and Abdul Ghaffar under sections 457 and 380 P.P.C. at P.S. Boat Basin. Altaf recorded that on 8-11-2018 he had a scuffle with the 3 accused who were his neighbours. In that scuffle he got injured. When he went to the hospital to seek medical aid, the 3 accused went inside his apartment and stole some valuables.

2. The charge against the 3 accused was framed but soon thereafter an application seeking amendment of the charge was moved by Altaf Hussain in which he wanted that sections 337-A(i), 337(ii), 459 and 460 be added. The application was dismissed by the learned 8th Civil Judge & Judicial Magistrate, Karachi South vide his order dated 23-1-2020.

3. Altaf appealed against the order of the learned magistrate and vide order dated 25-8-2020, the learned 11th Additional Sessions Judge, Karachi South ordered that only sections 337-A(i) and 337(ii) P.P.C. be added to the charge. He declined the prayer for the addition of section 459 and 460 P.P.C.

4. Through Crl. Misc. Appl No. 343 of 2020, Altaf Hussain has challenged the order of the learned 11th Additional Sessions Judge, Karachi South to the extent of non-inclusion of sections 459 and 460 P.P.C. in the charge. On the other hand, through Crl. Misc. Appl. No. 348 of 2020, the 3 applicants have challenged the

order of the learned 11th Additional Sessions Judge, Karachi South to the extent of the inclusion of sections 337-A(i) and 337(ii) P.P.C. in the charge.

5. I have heard both the learned counsels as well as the learned APG. The learned APG has very ably taken me through the allegations and the statement of witnesses recorded by the investigating officer of the case. My observations and findings are as follows.

6. It appears that the allegation is that a fight between the parties, who are neighbors broke out in which Altaf Hussain was injured. The challan has been accepted and cognizance taken. It is not clear from the record whether the fight occurred outside or inside the apartment. It is also unclear whether the valuables were stolen when the fight broke out or whether the accused entered the apartment after the fight. These are all issues that have to be determined by the learned trial court after evidence is led at trial. The FIR is merely an information of the occurrence of a cognizable offence and does not mean that the allegations therein are deemed to be correct. At the moment and upon a cursory review of the evidence the occurrence of offences under sections 337-A(i), 337(ii), 459 and 460 P.P.C. cannot be conclusively ruled out.

7. In view of the above, let sections 337-A(i), 337(ii), 459 and 460 P.P.C. be added in the charge. The learned trial court will then decide, on the basis of the evidence produced before it at trial, whether the said offences or any of them was successfully made out.

8. Criminal Miscellaneous Applications stand disposed of in the above terms.

JUDGE