

HIGH COURT OF SINDH

CIRCUIT COURT, HYDERABAD

Cr. Misc. Application No. 593 of 2022
[Niaz Hussain & Ors versus Imran Khan & another]

Applicants : Through Mr. Muhammad Sachal Awan advocate
Respondent : Through Mr. Irshad Ali Khoso advocate
The State : Through Mr. Nazar Muhammad Memon Addl. P.G.
Date of hearing : 10.10.2022
Date of order : 10.10.2022

ORDER

ADNAN-UL-KARIM MEMON, J.- Through instant Cr. Misc. Application, the applicants/accused have impugned the order dated 1.9.2022, whereby the learned trial Court dismissed the application filed by applicants/accused under Section 265-K Cr.P.C in Sessions Case No.265 of 2022 arising out of Crime No.16 of 2022 registered at P.S Talhar for offenses punishable under Sections 365-A, 302, 341, 201 & 35 PPC.

2. Brie facts of the case are that respondent/complainant lodged the aforesaid FIR against applicants/accused alleging that they had committed murder of his brother Waseem @ Maqsood Ahmed Talpur. After registration of FIR, the case was challaned before the competent court / trial court; and the applicants being nominated accused, filed an application therein under Section 265-K Cr. .C, which after hearing the parties was dismissed by the trial Court, hence the present application.

3. Mr. Muhammad Sachal Awan learned counsel for the applicants argued that the charge against the applicants/accused is entirely groundless, as the deceased had died due to natural death; and, there is no evidence at all to show culpability of applicant; besides there is no evidence that the brother of complainant was taken into custody in any crime. Per learned counsel, the case of the complainant is not supported by the postmortem report of the deceased; there is no probability of conviction of applicants/accused as no sufficient evidence is available against them, hence trial will be an abuse of law if continued; that it is settled principle of law that every case is to be based on three pillars viz: evidence, prosecution and trial, meaning thereby trial is third category; that since no evidence was / is available with the prosecution, as such case was recommended by the police for disposal under 'C-class', therefore, no question of recording evidence arises at all; that circumstantial evidence is not

connecting the applicants/accused with the commission of alleged crime; that it is settled law that when links of circumstantial evidence are broken, no question of conviction arises at all. He lastly prayed for setting aside the impugned order and prayed for acquittal of applicants in the aforesaid F.I.R.

4. On the other hand learned Additional P.G, assisted by Mr. Irshad Ali Khoso learned counsel for respondent/complainant supported the impugned order and submits that the applicants / accused are nominated in FIR with specific roles; that all the prosecution witnesses in their respective 161 Cr.P.C statements have fully implicated the applicants/accused; that at one hand I.O attempted to prove that the applicants/accused were available at the place of incident and the deceased himself jumped into the channel while at the same time I.O is trying to say that applicants/accused were not present at site; that the I.O had recommended the case under 'C-class', but the same was declined by the concerned Magistrate; that sufficient material is available against the applicants/accused, which is fully connecting the applicants/accused with the commission of crime as the injuries marks on the body of deceased are very much available as per medical report, to connect the applicants in the said crime; besides the deceased was tortured to death by police officials/ applicants, thus their involvement could not be ruled out which could only be thrashed out by recording evidence of the parties. At this stage learned Additional P.G submits that the applicants have to prove their innocence before learned trial court through evidence; thus they cannot seek acquittal in slipshod manner. They prayed for dismissal of the captioned application.

5. I have heard learned counsel for the parties and perused the record with their assistance.

6. There is no cavil to the proposition that the inherent powers vested in High Court under Section 561-A Cr. P.C is to be exercised in exceptional cases. However, this Court is also cognizant of the legal position that the powers conferred under Section 561-A Cr. P.C on the High Court are very wide and can be exercised at any stage of the proceedings. Under Article 203 of the Constitution of the Islamic Republic of Pakistan, 1973, High Court is responsible for entire administration of justice under territorial jurisdiction, and being charged with the responsibility of supervising all courts subordinate to it, this Court is competent to take all appropriate measures for preventing mal-administration of justice and abuse of process of law in appropriate cases. When the case is of no evidence or very registration of the case is proved to be malafide or the case is purely civil or when there is an unexceptional

delay in the disposal of case causing deplorable mental, physical and financial torture to the person proceeded against, this Court is competent to take cognizance of the matter and by exercising inherent powers under Section 561-A Cr. P.C, to correct a wrong by ordering the quashing of FIR and proceedings emanating therefrom. Powers vested in High Court under Section 561-A Cr.P.C. is co-extensive with the powers vested in trial court under Section 249-A and 265-K Cr. P.C, and in appropriate cases, can be invoked directly without resorting to a decision by the trial Court under section 249-A and 265-K Cr. P.C to void abuse of process of Court. This Court is also cognizant of the legal position that in appropriate cases, an aggrieved person can seek redressal of his grievance by filing criminal proceedings and civil proceedings simultaneously if provided under the relevant statute, however, where the dispute is pure of civil nature and the element of mensrea and criminal intention is missing, a party cannot be allowed to be dragged in criminal proceedings by converting a civil dispute into criminal dispute.

7. In criminal trial an accused person starts with the presumption of innocence in his favor and the presumptions hold the field till the prosecution succeeds in establishing the guilt of the accused beyond reasonable doubt. And the question thus is whether the applicants should still be permitted to undergo the ordeal of trial when they say that there is no evidence at all against them. Per learned counsel, there is no prospect of the case ending in conviction against the applicants, and the precious time of the Court would be wasted in holding trial only to formally complete the procedure to pronounce the conclusion on future date; therefore, the applicants should not be bothered; that no scar or injuries seen anywhere on the body of deceased. The learned senior counsel further contends that the case of the complainant is highly incomprehensible and false in the context of medical evidence in the case.

8. In the instant case, all the points raised by learned counsel for applicants / accused fall under the category of appreciation of evidence that has to be put to the respective witnesses, during the time of trial, to make it via evidence as contended above. The charge sheet in the instant case has also been filed. The plea taken by the applicants is like defense or to say the least, viz., the disputed question of fact, cannot be gone into at the quashment stage. The complainant and his witnesses have made clear allegation against the applicant/accused in their statement, recorded under section 161 Cr. P.C. Truth and falsity of allegation cannot be gone into at this stage. It is specific case of complainant that, the deceased was done to death by the police due to torture; however, it is for the trial court to see pro and contra. Taking into

consideration the inherent powers vested with the High Court, which should be exercised sparingly with the circumspection and also the points raised by the applicants, which are the matter for trial, I am not inclined to exercise power under section 561-A of the Code of Criminal Procedure at this stage.

9. For what has been stated above, at this stage, I am not in a position to say far and against in a cursory manner, so far as the pendency of criminal case is concerned, thus not persuaded to nip the crime in the bud and quash the proceedings arising out of Crime No.16 of 2022 registered at P.S Talhar for offenses punishable under Sections 365-A, 302, 341, 201 & 35 PPC and leaving for the trial court to see far and against the proposition put forward by the parties, after recording evidence.

10. This Criminal Miscellaneous application is hereby disposed of with direction to the trial court to examine the Medical officer and Complainant within one month positively and if from the statement of Doctor, it transpires the actual cause of death of deceased was natural and not by the purported acts of applicants, then the trial court shall take steps forthwith in terms of Section 265-K Cr.P.C. without going ahead further, however, after hearing the parties.

Karar_Hussain /PS

JUDGE