

THE HIGH COURT OF SINDH KARACHI

Criminal Misc. Application No. 100 of 2023

[Nadeem Saleem & others vs. State & others]

Applicants : Nadeem Saleem son of (Late) Muhammad Saleem Ahmed and three (03) others through Mr. Saad Fayyaz, Advocate.

Respondent No.1/State : Through Ms. Seema Zaidi, Additional Prosecutor General Sindh.

Respondent No.2 : Mrs. Amna Naseem wife of (Late) Muhammad Naseem, through Ms. Mehreen Ibrahim, Advocate.

Respondents 3-7 : Nemo.

Date of hearing : 06-04-2023

Date of order : 18-05-2023

ORDER

Adnan Iqbal Chaudhry J.- Under section 561-A Cr.P.C., the Applicants/accused have challenged order dated 02.02.2023 passed by the XV-Judicial Magistrate, Karachi (Central), taking cognizance under section 190(1) Cr.P.C. on a charge sheet submitted under section 173 Cr.P.C in respect of FIR No. 296/2022. The impugned order reads :

“Charge sheet accepted. Let case be registered. Issue notice to accused”

2. Heard learned counsel, the APG Sindh, and perused the record.
3. The parties to the case are the successors of late Muhammad Naseem and late Muhammad Saleem who were brothers. The accused Applicant No.3, Nasima Saleem, is the widow of late Muhammad Saleem, and the other Applicants his sons. The complainant/Respondent No.2 namely Amna Naseem is the widow of the other brother, late Muhammad Naseem. The dispute between them is over immoveable properties and they are already embroiled

in civil litigation over that, *viz.* Suit No. 2983/2021 by the accused/Applicants; and Suit No. 2647/2021 and Suit No. 1978/2022 by the Respondent No.2.

4. In the above background, on 24.08.2022, the SIP on duty at P.S. Gulberg, Karachi was forwarded an application addressed to the I.G. Police by the Respondent No.2 for registering an FIR against the accused Applicants. The Respondent No.2 alleged that she was a co-owner of 20% in a building on Plot No. 11/7, Kemchand Street, Jodia Bazar, Karachi [**Jodia Bazaar building**]; and that between 04.05.1994 and 27.11.1996 the accused Nasima Saleem had forged the signature of the Respondent No.2 in the record of the D.C./KMC to transfer to herself said building; that the late husband of the Respondent No.2 had also inherited a share from his mother, Mehmoodi Begum, in Bungalow No. D-133, Block-5, F.B. Area, Karachi [**the Bungalow**]; and that the accused Applicants had fabricated documents to transfer said Bungalow to themselves in the record of the KMC. It was further alleged that when the Respondent No.2 confronted the accused/Applicants, they agreed to transfer to her Plot Nos. 23 and 23/1, Sector D-12, North Karachi Industrial Area in lieu of the subject properties, but subsequently reneged and threatened the Respondent No.2 with dire consequences if she persisted. FIR No. 296/2022 was registered under sections 448, 468, 471, 420, 406, 506-B read with sections 109, 114 and 34 PPC.

5. When the investigation report was first submitted, the Magistrate noted *vide* order dated 22.11.2022 that the I.O. had not verified the ownership of the subject properties from the concerned departments, and therefore, the matter required further investigation. Subsequently, the I.O. submitted another investigation report on 06.01.2023 over which the impugned order was passed.

6. In the investigation report the I.O. acknowledged that though he had called upon the KDA, the concerned Mukhtiarkar, and the concerned Registrar of properties for the record of the Bungalow and

the Jodia Bazaar Building, but such record has yet to be received by him. Nevertheless, he went on to opine that all the accused/Applicants had forged documents in the KDA to mutate the Bungalow to their names; and all the accused/Applicants had made fake documents to transfer the Jodia Bazaar Building to themselves. Regards the Bungalow, the opinion of the I.O. is based upon documents which he has not disclosed; and as regards the Jodia Bazaar Building, his opinion is based on "information" received. On the other hand, the accused/Applicants have produced documents to submit that the Bungalow had been gifted to the accused Nadeem and Waseem by their grandmother (Mehmoodi Begum) by a gift deed dated 10.06.1982; and that the accused Nasima Saleem was a co-owner of the Jodia Bazaar Building who had bought-out the other co-owners. None of the documents relied upon by the accused/Applicants have been noticed in the investigation report. Regards the Jodia Bazaar Building, even though the allegation of forgery in the FIR was only against Naseema Saleem, the I.O. has implicated her sons as well. Since the impugned order is not a speaking order, it cannot be said that the Magistrate had examined the contents of the investigation report before taking cognizance.

7. While it is settled law that the power of the Magistrate under section 190(1) Cr.P.C. to take cognizance should not to be interfered with lightly as it is not strictly a judicial order,¹ it is also settled law that the taking of such cognizance implies the application of some mind to the investigation report.² Where such application of mind is not apparent from the order itself, and the investigation report too is vague as to a triable offence, the High Court can interfere in the exercise of inherent jurisdiction so as to ensure that the legal process is not being abused.³

¹ *Bahadur v. The State* (PLD 1985 SC 62).

² *Khushbakhtur Rehman v. The State* (1985 SCMR 1314)

³ *Hidayatullah v. The State* (2006 SCMR 1920).

8. In the circumstances discussed above, where the I.O. had admittedly not been able to verify the title to the subject properties and the documents alleged to be forged or fabricated let alone the allegation of 'threats', the opinion in the investigation report appeared to be the ipsi dixit of the I.O. Therefore, there is force in the submission of the accused/Applicants that the learned Magistrate has not applied his mind to the investigation report while taking cognizance. Consequently, the impugned order dated 02-02-2023 is set-aside with the direction that the learned Magistrate shall pass a speaking order on the investigation report.

JUDGE

*PA/SADAM