

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Rev. Appln. No.S-14 of 2021

DATE **ORDER WITH SIGNATURE OF JUDGE(S)**

1. For orders on office objections.
2. For hearing of main case.

24.05.2023.

Mr. Abdul Hafeez Daudani, Advocate holds brief for Mr. Ghulamullah Chang, Advocate for Applicant.

Mr. Imran Ali Abbasi, Assistant P.G.

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Mr. Abdul Hafeez Daudani, Advocate requests for adjournment as his senior Mr. Ghulamullah Chang, Advocate is busy before Principal Seat at Karachi. His request is declined in view of earlier Orders and Diaries.

Learned A.P.G has argued the matter at length. The main case is about lodging of FIR against the two Accused persons, namely, Mudasir Hussain son of Anwar Hussain Khuwaja and Khair Muhammad alias Baboo son of Lakhadino Khoso. The FIR alleged that the Accused, *inter alia*, resorted to fraudulent tactics and were taking illegal commission in respect of "Ihsas Kifalat Program" from poor people. The case was sent up for trial and the learned Trial Court vide Judgment dated 29.10.2020 acquitted both the Accused under Section 245(1) of Cr.P.C, followed by a show-cause notice under Section 250 of Cr.P.C to the Applicant, for the alleged offence committed under Section 211 PPC (for falsely implicating the above named persons). Reply was submitted by Applicant which is at Page-63, but, rejected by the Trial Court. Learned A.P.G states that there is no illegality either in the Order passed on the reply of Applicant nor in the Appellate Court Judgment.

Conversely, the above argument is rebutted by Applicant's Advocate present today. He argued the matter on the basis of grounds mentioned in this Revision, the crux of which is that the investigation was properly done by the Applicant, being Investigation Officer and there was no defect in the investigation itself. Further contended that if this practice is adopted, then it can undermine the ability of Investigation Officer to investigate the matters in future.

Arguments heard and record perused.

The reply of Applicant to the show-cause notice, at Page-63, is perused, which is quite interesting. He has stated that above named persons took advantage of pre-arrest Bail and therefore investigation was not done properly. If the above named persons were not cooperating, then being I.O he has all the authority to take appropriate steps, including, seeking cancellation of the Bail from the Court. On considering the above stance of Applicant, the learned Trial Court passed the Order dated 12.11.2020, imposing a fine of Rs.15,000/- on the Applicant as compensation to be paid to Khair Muhammad alias Baboo, inter alia, for intentionally dragging him in a criminal proceeding. The said Order was challenged in Cr. Appeal No.10 of 2020, which Judgment is impugned in the present proceeding. The Judgment has been carefully examined, in which the learned Appellate Court has attended each and every aspect of the case and has reached the conclusion that the Order passed by the learned Trial Court is correct in the circumstances; *inter alia*, as Bank officials were not under the control of above accused Persons (now acquitted), who were in a position to interfere in the investigation; coupled with the fact, that if incriminating evidence was not available, then the Applicant, who himself was an I.O (Investigating Officer) could have absolved the above persons, under Section 169 Cr.P.C.

Secondly, the Applicant was the Complainant as well as Investigation Officer; although, *stricto sensu*, it is not prohibited, provided it does not prejudice the accused person;but, this practice is not approved by the Courts, as it would compromise his impartiality as an investigation officer to find out the truth. The relevant Judgments in this regard are Zafar v. The State – 2008 SCMR 1254 and Nazeer Ahmed v. The State – PLD 2009 Karachi 191.

In view of the above discussion, there is no merit in the present Revision Application and the same is accordingly dismissed.

JUDGE

Shahid